No. 198.
Brief of Cragin for Appellees.
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Supreme Court of the United States.

OCTOBER TERM, 1898.

No. 198.

BLANCHE K. TOWSON, EDITH G. GRAHAM, ET AL.,
APPELLANTS,

vs.

CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

BRIEF FOR APPELLEES, CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, AND ALEXANDER W. RUSSELL.

CHAS. H. CRAGIN,
Attorney for Appellees, Christiana V. Moore, Frederick L. Moore, Julia A. Russell, Alexander W. Russell.

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CHRISTIANA V. MOORE, FREDERICK L. MOORE, JULIA A. RUSSELL, ALEXANDER W. RUSSELL, GERTRUDE FRY, AND EDITH FRY.

Brief for Appellees — Christiana V. Moore, Frederick L. Moore, Julia A. Russell, and Alexander W. Russell.

STATEMENT OF CASE.

The bill in this case, *not sworn to*, was filed on *April* 16, 1896, by *some* of the representatives of Leonidas C. Campbell, deceased, who was a son of William H. and Mary I. Campbell, deceased, against Christiana V. Moore and Julia A. Russell (the only surviving children of William H. and Mary I. Campbell), Fred. L. Moore and Alex. W. Russell (the husbands, respectively, of said Christiana V. Moore and Julia A.

Russell), as executors of the will of said Mary I. Campbell, and Gertrude and Edith Fry, the *infant* children of May Fry (born Campbell), deceased, and her husband, Henry D. Fry (the said May being a daughter of said Leonidas C. Campbell), for the two fold purpose:

First, of having the gifts, *inter vivos*, of certain United States registered bonds of the par value of $13,000, made to the said daughters, Christiana V. Moore and Julia A. Russell, by their mother, the said Mary I. Campbell, "on the 6th day of October, 1885" (R., 4), decreed as "*advancements* to her said daughters, respectively, and *pro tanto* an ademption of the legacies bequeathed to them, respectively" (R., 4, 5); or, *second*, to have the transaction declared void, on the ground of alleged *undue influence* (R., 5).

The Theory of the Bill is, in Substance, Briefly:

(Pars. 1 to 4 relating merely to the family history.)

(Par. 5.) That Wm. H. and Mary I. Campbell "*always* declared" that their property should be "*equally* divided" between their three children (R., 2).

(Par. 6.) *That with this understanding in view*, Wm. H. Campbell, on March 16, 1878, made his will, and that the $5,000 he left therein to each of his daughters (the defendants Mrs. Moore and Mrs. Russell) *equalized* any gifts he had *previously* made to his son and his (the son's) family (R., 2).

(Par. 7.) That on May 26th, 1882, Mary I. Campbell made her will—

> "*in conformity to the aforesaid understanding and agreement, and for the purpose of carrying out the terms and provisions of the will of William H. Campbell*" (R., 3).

(Par. 10.) "That a large portion of her income was given to her said daughters by way of advances" (R., 4).

(Par. 11.) That on the "*6th day of October*, 1885," Mary I. Campbell transferred on the books of the Government, to each of said daughters, $6,500 of registered United States bonds, worth about $15,000, then belonging to her (R., 4), and—

(Par. 14.) While—

> "they have no *personal* knowledge of the circumstances under which the aforesaid transfers were made to the said daughters, *that if it be established that the said transfers were voluntary*, then they were *advancements* to her said daughters respectively, and *pro tanto* an ademption of the legacies bequeathed to them respectively, and must be accounted for as such in the final settlement of her estate" (R., 4, 5).

(Par. 15.) That—

> "THEY ARE INFORMED and believe that the said transfers were not the voluntary act of the said Mary I. Campbell; but, so far from being such, were the result of the *undue influence* and importunate and incessant demands of the said Julia A. Russell and Christiana V. Moore, aided and abetted by their respective husbands" (R., 5).

(Pars. 8, 9, 12, 13.) By *innuendo* they also seek to make it appear that the sons-in-law have been guilty of breach of trust (R., 3, 4).

Now, what are the prayers (R., 5, 6)?

They ask that the real estate may be ordered to be sold, and that out of the proceeds—

> "the said $13,000 of registered bonds may be accounted for at their market value and charged to the said Christiana V. Moore and Julia A. Russell" (R., 5), "and that the said executors, *if they shall claim* that the securities appearing upon the inventory of the estate of William H. Campbell and not appearing upon that of the estate of Mary I. Campbell *were sold by them* and reinvested in securities which do appear upon the inventory of the

estate of Mary I. Campbell, they shall, in the accounting to be had, state specifically what securities they sold and at what price and the securities in which they reinvested and what they paid respectively for the same."

ANSWERS OF DEFENDANTS.

The answers of the defendants Christiana V. Moore, Julia A. Russell, Frederick L. Moore, and Alexander W. Russell *deny, under oath,* all of the material allegations of the bill, the first two averring, in reply to the charge of undue influence—*the only one about which there is any testimony offered* (par. 14, R., 27):

"That the transfers of said bonds by their mother to them were made entirely voluntarily and of her own free will and without any request or suggestion even, in any way, by them or either of them, nor, from what their mother had told them, had either of their respective husbands suggested such an act. It was the free, unconditional and unsolicited gift from a mother, then possessed of real and personal property worth nearly $100,000, who was most devotedly attached to her only surviving children, and who was in return, as she well knew, equally beloved by them. The gifts were made even more freely, as these defendants believe, than were the subsequent gifts of $500 each, made by their mother, in the summer of 1891, to the complainant Mary K. Campbell, the widow of her deceased son, Leonidas; as freely as were the gifts of $100 each, made by her to the complainants Blanche, Edith, and Nannie, as well as to her granddaughter, May, since deceased, the children of her said deceased son, upon their respective marriages; as freely and with as much pleasure as were the gifts of $100 each, always made every Christmas, to the said Mary K. Campbell and to these defendants; as freely as were the gifts of thousands of dollars made by their mother to numerous deserving poor persons and to all kinds of charitable and benevolent objects."

"The father and mother of these defendants, as before stated, were most confidential to each other, and

the reason assigned by their mother to them for wishing to give them these bonds, was, that she well knew that their father had in his lifetime given, advanced, and paid out to and on account of his son, Leonidas, in excess of what he had given, advanced, or paid out to and on account of these defendants, his daughters, and beyond the amount of the legacies to them in his will, sums, in the aggregate, fully equal to half the value of said bonds, and that she desired, as an act of justice to them, to thus equalize their shares.

"But they deny that their mother ever, by word or act, regarded or treated these gifts as advancements to her daughters, and *pro tanto* an ademption of their distributive shares under the residuary clause of her will, and to be accounted for as such in the final settlement of her estate; and they are advised that, even if their mother had assigned no reason for these free and voluntary gifts to her daughters, such gifts, so made, could not legally be regarded or considered as advancements under her will to them, and *pro tanto* an ademption of their distributive shares under the residuary clause thereof."

(Par. 15.) (R., 27, 28.) "They deny, as stated by them in the preceding paragraph, that the said transfers were not the voluntary act of their mother; they deny that said gifts were the result of any undue or any other kind of influence, except that of a mother's love for her only children, and, as she declared, an act of justice to them; they deny that there were any importunate and incessant or any other kinds of demands ever made by them or either of them, alone or together, or aided and abetted by their respective husbands, on their mother for anything whatever, or that the relation of their respective husbands, as executors or otherwise, ever gave them any controlling or other undue influence whatever over her, and they deny, from the thorough knowledge of the character of their mother and of their respective husbands, that there was any violation by their husbands, or either of them, of the duties which their mother reposed in them as executors of her said will or otherwise howsoever, though they are informed that the provisions of their mother's will were known to the said executors thereof."

The executors, Frederick L. Moore and Alexander W. Russell, likewise declare (Par. 14) (R., 21, 22):

> "That said transfers were made entirely voluntarily and of her own free will, without any request or suggestion even, in any way, that they ever heard of from either of said daughters (their wives), and certainly without any suggestion whatever from either of these defendants, * * * she well knowing, so she informed these defendants, that her husband had, in his lifetime, given, advanced, and paid out to and on account of his son Leonidas, in excess of what he had given, advanced, and paid out to and on account of his daughters, and beyond the amount of the legacies to them under his will, sums in the aggregate fully equal to half the value of said bonds, and she informed these defendants that she desired to thus equalize their shares."

They also answer fully every other allegation in the bill of which they have any knowledge, and deny under oath every one reflecting in any way upon their management of the estates of both Wm. H. and Mary I. Campbell.

INFANT DEFENDANTS NOT IN COURT.

The infant defendants, whose interests are identical with those of the complainants, *have not been served with process, and no guardian ad litem has been appointed to answer for them* (R., 15, 16, 151).

Jurisdiction.

It will be seen from the prayers of the bill that the whole claim of the complainants is contained in their third prayer (R., 5, 6), previously quoted, and that the first question here to be decided—jurisdiction—has reference solely to the true amount "in dispute," which, "exclusive of costs, shall exceed the sum of $5,000" (act of February 9, 1893).

As the executors do not "claim" that said "securities were

sold by them and reinvested in (other) securities," *but, on the contrary,* they deny such to be the fact, "*said executors not having made said purchases or sales*" (R., 19, 20), the only "matter in dispute" here has reference to the gift of the $13,000 of U. S. registered bonds, which bonds, at the date of their transfer, the complainants allege "were worth about $15,000" (R., 4), and this stated value is admitted to be about correct (R., 19, 26); they certainly were not worth any more than this amount.

We have therefore, *according to the theory of the complainants' bill,* this state of facts: That they, the appellants, being *six* of the *seven* children, or *six* of the *eight* heirs-at-law, of Leonidas C. Campbell, deceased, would be entitled, in the event of the present decree being reversed, to *six-sevenths of one-third* of $15,000, or to $4,285.71, which is certainly *at least* $714 30 less than the amount required by law to give this court jurisdiction.

The only way by which this sum of $4,285.71 could be increased so as to "exceed the sum of $5,000, exclusive of costs," in order to confer jurisdiction upon this court, would be by adding interest on said amount from the date of the gifts, as alleged "advancements," or from the time when these bonds were alleged to have been obtained by undue influence, "Oct. 6th, 1885."

But even if these gifts could legally be construed as advancements, no interest is chargeable thereon. Manning *vs.* Thurston, 59 Md., 218, 224, 225; Moole *vs.* Cutting, same, 510, 523, 524; Osgood *vs.* Breed, 17 Mass., 356, 358, 359; Oyster *vs.* Oyster, 1 S. & R., 422, 425; Hall *vs.* Davis, 3 Pick., 450, 451, 452; Miller's Appeal, 31 Pa. St., 337, 341; Nelson *vs.* Wyman, 21 Mo., 347, 351, 352; Ray *vs.* Soper, 65 Mo., 470, 474.

Again, if the gifts were set aside on the ground of undue influence, in that event no interest either could be allowed, for the complainants do not make any claim therefor in their

bill, and the only prayer in respect to the whole matter being the one just referred to.

As was said by this court in the case of Udall *vs.* Steamship Ohio, 17 How., 17, 18, " When the claim is founded on dollars and cents, whether it be a libel, *a bill in chancery*, or an action at law, the damages must appear to give jurisdiction on the face of the pleading on which the claim is made. *No computation of interest* will be made to give jurisdiction *unless it be specially claimed* in the libel." To the same effect is also the decision in Olney *vs.* Steamship Falcon, same, 19.

Having shown, then, that notwithstanding some innuendoes or insinuations contained in the bill in reference to other matters, that *according to the prayer of the bill, which is the test here*, the setting aside of the gift of $13,000 of United States registered bonds, " worth about $15,000," is the only " matter in dispute," and no interest being allowable thereon *in any event*, it is respectfully submitted—(as the appellants can only claim six-sevenths of one-third of $15,000, or $4,285.71)—that this court is without jurisdiction to re-examine, reverse, or modify said decree of the Court of Appeals of the District of Columbia, and that said appeal should be dismissed.

STALE DEMANDS.

Passing on to the consideration of the case itself, it will be observed that while the complainants *in their bill* (Par. 11) *allege* that this transfer of the bonds took place on " *the 6th day of October*, 1885 " (R., 4), and that the *personal* estate of Mary I. Campbell has all been settled up, *and that there only remains* one piece of real estate to be sold (R., 5), they do not even mention, anywhere, *when she died, or when they were first* " *informed*," *as they say they were* (R., 5), of this alleged fraudulent transaction; but the exhibits which they file with their

bill show what they did not see proper to state, viz., that she died *August 6th*, 1893 (R., 14); and *they offer not a word of explanation as to why they waited till nearly eleven years after the transaction took place, nearly three years after Mary I. Campbell had died, and some two years after her personal estate had all been settled up and distributed* (Nov., 23, 1894) (R., 29–33), before charging the defendants with these alleged frauds.

Badger *vs.* Badger, 2 Wal., 87, 95.
Lansdale *vs.* Smith, 106 U. S., 391, 394.

More about this when I come to analyze the testimony offered by the complainants to sustain the alleged charge of undue influence, and on the subject of laches.

WITNESSES.

Testimony was then taken by the complainants, and *three* witnesses were called and examined to prove the alleged charge of undue influence.

The defendants, in rebuttal, took the testimony of *fifteen* witnesses, and *also offered in evidence several letters and statements, bearing directly upon the matters in controversy, from the said Mary I. Campbell herself.*

The complainants attempted to meet this evidence by recalling one of their former witnesses, and by introducing the testimony of two other witnesses in rebuttal, *so called.*

DECREE.

Upon the hearing of the case before his honor Mr. Justice Hagner, the bill was dismissed with costs (R., 150), quite a lengthy oral opinion being delivered, but no written opinion was filed by the court.

Appeal was then taken by the complainants to the Court of Appeals of the District of Columbia, which court affirmed the decree of the supreme court of said District (R., 153, 159) (11 App. D. C., 377).

ARGUMENT.

Before beginning the examination of the testimony introduced on behalf of the complainants, let me observe how matters stood when this suit was filed, and what they probably had in mind when bringing it:

(1.) Mrs. Mary I. Campbell, who gave these bonds to her two daughters, was dead, and her lips were doubtless *supposed to be forever sealed.*

(2.) Her executors are made parties defendant with these daughters, their wives, so the law will not permit them to say a word in explanation of the true motives actuating the mother in giving her daughters these bonds.

(3.) The daughters themselves, for the same reason, cannot open their mouths as to what their mother told them.

(4.) And from the further fact that these defendants are husbands and wives, another provision of law will *perhaps* prevent them from testifying at all.

(5.) So by waiving the usual oath required to answers in equity, which will prevent the answers from having any weight, the defendants were doubtless supposed to be in about as helpless condition as could be desired, when confronted with such evidence as Mrs. Laura Ellen Baker had told these complainants she would swear to.

The court will certainly, under the circumstances above stated as to the legal restrictions of evidence on our part, require clear, straightforward testimony on the part of the complainants.

"But where there has been a change of circumstances with reference to the parties and the property, *and still more where death has intervened, so that the mouth of one party is closed and those who represent his interests are not in a predicament to avail of the explanations which he might have made,* out of the charities of the law and in consideration of the fact that *fraud is never to be presumed, but must always be proved and proved clearly,* the courts limit very much in such cases the measure of time within which they will grant relief, because the presumption comes in aid of a dead man that he has gone to his account with a clear conscience."

Hammond *vs.* Hopkins, 143 U. S., 224, 273.

That there has been false swearing here, of the most deliberate kind, is beyond dispute. Who, from the evidence, is guilty of perpetrating *this* fraud? For it is impossible to escape the conclusion that either Mrs. Baker and her daughter have told a deliberate falsehood about this whole matter, or that Mr. and Mrs. Moore, Miss Moore, Mr. and Mrs. Russell, and Mrs. Mary I. Campbell have done so. That it is a fabricated story, gotten up by Mrs. Baker, I think the proof demonstrates to a mathematical certainty.

TESTIMONY OF COMPLAINANTS.

Now, let us see, briefly, first, what the evidence is that is adduced by the complainants to sustain their charges of fraud, and for a better understanding of it I shall begin with the second, their chief, witness, Mrs. Laura E. Baker, and in anticipation of the natural inquiry as to who this witness is, I would say that her mother-in-law was the third wife of Mrs. Mary I. Campbell's brother (R., 124), and that she is the "intimate friend," as she states, of the complainants (R., 44). She resides at 1932 15th street N. W. (R., 39) with her daughter, Miss Eliza B. Baker (their next most important witness) (R., 140), and with Thos. Brooke, a cousin (R., 146) (the latter two being their *so-called corroborating* witnesses),

and they all three reside within about six squares of Mrs. Mary K. Campbell—the mother of these complainants—their other witness, who resides at 1302 Rhode Island avenue N. W. (R., 46). *So it will not be a very rash supposition to imagine that all four of them had, before actually giving their testimony, talked this whole matter over most carefully and thoroughly, and that whatever the alleged facts were stated to be they were all known and understood by these witnesses before testifying.*

She is going to tell the court about certain *alleged* conversations she had with Mrs. Mary I. Campbell and Mrs. Christiana V. Moore, in which this old mother accuses this daughter, Mrs. Moore, and her other daughter, Mrs. Russell, aided and abetted by her son-in-law, Mr. Moore, of doing all kinds of mean, cruel things to her, included in which acts was that of worrying her continually "to divide $12,000 between them equally;" and in turn Mrs. Moore is made to accuse her mother of doing mean and contemptible things to her. But an examination of the whole testimony of the complainants will fail to disclose one word about the gift or transfer of any *bonds* whatsoever, the gift or transfer of which is the real object of inquiry by this suit.

Now, in view of what I have called to the attention of the court relative to the rules of evidence binding us, we are certainly entitled to be fully advised of everything that would tend to throw any light on what this witness is stating, in order that we may test its truthfulness.

So the natural inquiries at once suggested are:

(1.) When did this alleged conversation take place?

(2.) Where did it take place?

(3.) Who were present?

(4.) What was alleged to have been stated?

Testimony of Mrs. Laura Ellen Baker (*R.*, 39).

The examination began on Saturday, *October* 24, 1896. What does she swear to?

(I emphasize the principal *pronouns* used throughout this examination, both questions and answers, to show clearly who were *understood* and *indicated*, respectively thereby, *to be present* at these alleged interviews.)

After giving her name (her age is not asked), residence, etc., counsel for complainants asks her (R., 40):

> Q. "Did *you* visit her (Mrs. Mary I. Campbell) for *one or two or three years previous to her death?*" A. "Oh, yes, sir."
>
> Q. "State how frequently during *those* visits *you* did see her." A. "Well, it might have been three months, or it might have been two, or it might have been four. *I saw her two or three or four times a year.*"

Mrs. Campbell went to Philadelphia in June, 1886 (R., 105), returned in May, 1892 (R., 106), and died in August 1893 (R., 106), and as this witness subsequently states that "I only saw her *once* after she came from Philadelphia" (R. 46), she therefore only *saw her once in these last seven years.*

> Q. "What was the degree of intimacy existing between you in your communications to each other; were you intimate or not?" A. "Yes, sir; I think I was *quite.*"
>
> Q. "Have you any recollection of any conversation at any *one* of *these* visits to Mrs. Campbell by *you* in which she spoke of the relations existing between Mrs. Moore and Mr. Moore and herself?" A. "Yes, sir."
>
> Q. "Can you tell how long it was before her death?" A. "It was some time before her death."
>
> Q. "*What do you mean by some time*—some *months* or some *years?*" A. "Some *months.*"
>
> Q. "*Was not as much as a year?*" A. "*Oh, no, sir.*"

1st. So now we have it attempted to be proved by the complainants that this alleged conversation, which she is about to narrate, *took place "not as much as a year" "before Mrs. Campbell's death."* Mrs. Campbell died in August, 1893, and this testimony is all subsequently changed by this witness to "a month or six weeks after the death of Miss Eloise" (Mr. Campbell's sister) (R., 44, 45), which was on October 1, 1885, *a discrepancy of about eight years only*, and we then prove that the Moore residence was closed up and Mrs. Campbell absent therefrom during *that period*, viz., from about "October 10th to December 15th, 1885," and so admitted subsequently by their own witness, Eliza B. Baker (R., 142).

> Q. "Where did you see her, in what part of the house, on *that occasion?*" A. "*I* saw her up under the mansard roof."
>
> Q. "Was that her room?" A. "Yes, sir."

2d. So they undertake to prove, secondly, in the same manner that this alleged conversation took place in Mrs. Campbell's bed-room, *in the story under the mansard roof.*

The evidence conclusively shows that upon her return from Philadelphia in May, 1892, Mrs. Campbell occupied, until her death, in August, 1893, a room on the *second floor*—so admitted afterwards by this witness (R., 46).

> Q. "Then state in your own way what Mrs. Campbell said to you *upon that occasion.*" A. "She told *me* that Mrs. Moore and Mrs. Russell had made her promise that if she was to outlive Miss Eloise Campbell that *she would divide* $12,000 between them equally if she outlived Miss Eloise Campbell, and that they worried her so to get rid of them she promised them."
>
> Q. "If she said anything more on that subject please state all she said." A. "She told *me* that Mr. Moore did not like her; Mrs. Moore did not like her; that she was living too long; that she was in their way. She told *me* that she was afraid of Mr. Moore."

In contrast with such stuff as this I place a letter written by this old mother to this son-in-law, Mr. Moore, *about this very time*, according to the *amended* testimony of this witness (R., 45), dated November 23d, 1885 (R., 134), while she was staying at Mr. and Mrs. Moore's married daughter's ("Julia's") home in Georgetown (Mrs. R. B. Tenney), in which she writes:

"With *a mother's love, say to my dear child* (Mrs. Moore) that *she has been on my heart and mind all the time*, commending her to the care and support of our Heavenly Father, who gives strength according to our day. We will return Him grateful hearts for all His goodness and trust Him for the support she may still need, and to restore her to us again with the blessing of good health, and may our lives, which He has made His care, be more devoted to Him," etc.—closing with—"Julia *joins me in love to you both.* Yours with *sincere effect*, M. I. Campbell."

Another letter, written to him while she was spending a few weeks in Philadelphia, dated August 27th, 1883 (R., 136) (the visit referred to by Mrs. Moore in her testimony (R., 112, 113), the date of which she could not then remember), which is also about the time this witness testifies that the alleged first conversation took place between her and Mrs. Campbell, *in her corrected testimony* (R., 45), closing "with love to all, *and for yourself 'as much as you want,'* from yours truly, M. I. Campbell."

And the testimony of *all* of the defendants' witnesses, and as a single illustration I take that of Miss Blanchard (R., 93):

"She (Mrs. Campbell) has more than once spoken to me of her affection for Mr. Moore, and I know of one occasion that Mr. Moore had been in the room and had bid her good-morning or good-night, she said: 'What a good, good man that is. *I am so thankful for such a son.*' She would speak of them *all* with the *utmost affection.*"

Q. "After *you* left the room of Mrs. Campbell, did *you* see any one else in the house?" A. "Yes, sir; *I* saw Mrs. Moore."

Q. "Did any conversation take place between Mrs. Moore and *yourself at this time?*" A. "Yes, sir."

Q. "State what it was." A. "Mrs. Moore told *me* that that was her way. Had she said anything against them to *me;* if she has not to think anything of it, that she was in her dotage; that she went around the neighborhood *talking to the neighbors against them.*"

Q. "Did she name any one, any particular neighbor?" A. "One *Mrs. Bradley.*"

Q. "Is that the Mrs. Bradley who was just here?" (the first witness examined by them). A. "I do not know, sir. I never saw her."

Q. "She named a Mrs. Bradley, who Mrs. Moore said was the neighbor?" A. "Yes, sir."

In opposition to this I place a part of the testimony of Mrs. Moore (R., 106) on this subject, referred to more fully hereafter:

"Such a conversation did not take place—I never, in my life, heard of my mother saying anything against me to any one; therefore I could not have asked Mrs. Baker not to believe what I never suspected my mother of stating."

And the testimony of Mrs. Bradley (R., 39), *the complainants' own witness:*

By COMPLAINANTS' COUNSEL:

Q. "Did she (Mrs. Campbell) *at any time* complain to you *in any way* about the treatment she had received?" A. 'No."

Q. "Now, did *any one ever* say to you that Mrs. Campbell had made complaints?" A. "Complaints of what?"

Q. "Of Mrs. Moore." A. "No."

Q. "Go on and state anything more that she said." A. "Well, she told *me* afterwards that she had *divided this money* between Mrs. Moore and Mrs. Russell equally."

Q. "Was this in the presence of Mr. Moore or Mrs. Moore?" (*Now note particularly the answer:*) A. "No, sir; *I WAS ALONE.*"

"After she told *me* she had divided this money equally she wanted the rest of her money to go to her grandchildren."

(That is, she desired to disinherit her only children, Mrs. Moore and Mrs. Russell.)

Q. "Did you have any conversation with Mrs. Campbell upon this subject after the death of Miss Eloise Campbell?"

As the witness has just stated that this alleged conversation took place "less than a year" before Mrs. Campbell's death (August, 1893), it of course took place after the death of Miss Eloise Campbell, which was on October 1, 1885 (R., 4).

A. "Yes; after her death she told *me* that she divided it equally between Mrs. Moore and Mrs. Russell, $12,000, she told *me*, which she supposed her husband had laid aside for the support of *Miss Eloise.*"

Q. "And there was something else she said, or did she say anything with respect to her wishes in regard to the rest of her property?" A. "No, sir; except what I have told you. She wished the balance—she did not say property; she said money—to be divided among her grandchildren."

Q. "Now, is there anything pertinent to this controversy that you know of as coming from Mrs. Campbell, senior; is there anything else that she said to you?" A. "No, sir; I think I have said everything. There is one thing I remember now. *The last time* she had a conversation with *me* she told *me* to sit close to her—she was very deaf. Told me to listen to her and not to reply; that there was *always* somebody listening at the door. She told *me* that she was not under obligations to the Moores, for she paid them ample board for her maid and herself."

Against this alleged *secret* part of the conversation between Mrs. Mary I. Campbell and this witness I place what Mrs. Carlisle, her maid, says Mrs. Campbell told her when she

left the room after Mrs. Mary K. Campbell called upon a certain occasion (R., 83): "There was no occasion for me to leave, *as there were no secrets;*" and as to any one ever listening at her door, I refer to the testimony of all of the witnesses for the defendants who could have observed any such conduct, denying that any such contemptible thing ever occurred.

This closes the direct examination of this witness; and I respectfully submit that from a careful reading of her testimony no one could possibly imagine for an instant *that any one was with her* during *any part* of the time she has been speaking of; but *certainly* during that part of the alleged conversation in which she states that "*she had divided* this money between Mrs. Moore and Mrs. Russell equally," she distinctly and positively swears "*I WAS ALONE*" (R., 41).

3d. So I say, thirdly, *they have proved that no one but this witness was present* when Mrs. Mary I. Campbell is alleged to have stated all this to Mrs. Laura E. Baker.

Upon cross-examination, in response to some inquiries from me relative to any gifts made her by Mrs. Campbell, she says (R., 42): "*One* Christmas, sir, she gave me forty dollars for a Christmas gift."

This is about the only specific gift that she seems able to recall.

Against such ingratitude from a so-called "*intimate friend*" I place the letter, dated Philadelphia, November 26th, 1890, from Mrs. Mary I. Campbell to Mr. F. L. Moore (R., 135), in which she says:

"I am about to anticipate, but better too early than too late. *I have usually sent my poor friend, Mrs. Laura Baker,* a gift a few days before Christmas. Please send her forty (40) dollars between the 1st and the 10th of December," etc.

(R., 43:) Q. "She told you in that conversation that Mr. and Mrs. Moore had both tried to get her to divide this $12,000, *or bonds,* up between them"? A. "I did

not say Mr. Moore, sir. I said Mrs. Moore and Mrs. Russell. I did not mention Mr. Moore's name. I did not say *bonds*, either. I said *money—$12,000. She never told me anything about bonds.*" (This she repeats—R., 44).

So we have it proved, by the complainants' own witness, that what Mrs. Mary I. Campbell is alleged to have told her *had no reference whatever to these bonds, to set aside the gift of which is the real and only object of this proceeding.*

(R., 43:) Q. "Was there anything unpleasant said at any of the other visits about Mr. and Mrs. Moore and Mrs. Russell?" A. "Only on this *one occasion*, sir."

So, notwithstanding the fact that complainants' counsel has himself proved by this his witness that this alleged conversation took place "*not as much as a year before her* (Mrs. Mary I. Campbell's) *death*" (R., 40) (which was in August, *1893*), now, under so-called redirect examination, she states, in response to his *leading* questions, that—

"the conversation * * * took place a *month or six weeks* after the death of Miss Eloise, * * * which was in *1895*" (R., 44).

And she then denies having said that it took place a few months before Mrs. Campbell died (R., 45).

I have given in full all of the material parts of the testimony of this witness, because the whole case of the complainants, *heard on its merits*, hinges on the truth or falsity of her statements, and I shall want to refer to different parts of her testimony occasionally hereafter.

When we met *one week afterwards, October 31* (R., 45), *at the request of complainants' counsel*, to enable this witness to make some *corrections* in her evidence, *the examiner read her testimony all over to her* (see cert. of ex., R., 149, 150), and she then states (R., 45):

"I wish to correct my testimony in respect *to the* TIMES of *my* conversations with Mrs. Mary I. Campbell

testified to by me in my examination. (1) Mrs. Mary I. Campbell told *me before the death of Miss Eloise* that Mrs. Moore and Mrs. Russell had made her promise that if she outlived Miss Eloise she would divide equally between them *the $12,000 in money.* That was before Miss Eloise's death. (2) Then afterwards *I* went to see her after Miss Eloise's death—a month or six weeks,-I think—and she told ME *that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell. That was after Miss Eloise's death. (3) Then just before she went to Philadelphia she told *me* of the unkind treatment of Mrs. Moore and Mr. Moore."

So now, after the testimony of this witness had all been written out, and had been in her and these complainants' possession for about *one week*, and the examiner had read it *all* over to her, she changes her former story and makes three separate and distinct visits out of it; but she does not pretend even now that any one accompanied her on these alleged visits. On the contrary, she *reiterates* as to this *second* visit:

"Then afterwards *I* went to see her after Miss Eloise's death—*a month or six weeks*, I think—and she told ME *that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell."

But most important of all to be observed is that she does not make any change in that part of her testimony, above noted, in which she swears *positively*, "I WAS ALONE" when Mrs. Mary I. Campbell told *her* "*that she had divided* the $12,000 equally between Mrs. Moore and Mrs. Russell."

She concludes her corrected testimony, in answer to a question by complainants' counsel, by stating that she only saw Mrs. Mary I. Campbell *once* after she returned from Philadelphia (R., 46)—*i. e.*, once in the last seven years—after first testifying that "she (I) saw her two or three or four times a year."

Now to go back for a moment.

The first witness called by the complainants was Mrs. Mary Duncan Bradley (the widow of Joseph H. Bradley, Jr., Esq., a former member of the bar of this court). She resides at No. 1688 Thirty-first street, Georgetown (R., 38), and is the next-door "*neighbor*" on the north to the Moores (R., 100).

As Mrs. Laura E. Baker, whose testimony I have just been commenting on, had told these complainants that Mrs. Moore had told her that her mother, Mrs. Mary I. Campbell,—

"went around the neighborhood talking to the *neighbors* against them" * * * "and named Mrs. Bradley as one of the *neighbors*" (R., 41),

they doubtless thought that it would tend to strengthen the testimony of this, their chief witness, if they called Mrs. Bradley first and had her *corroborate* Mrs. Baker, in a measure, *in advance.*

Well, what does Mrs. Bradley swear to?

Testimony of Mrs. Mary Duncan Bradley (*R.*, 38).

In the first place, she contradicts both of the next two witnesses called by the *complainants*—Mrs. Mary K. Campbell and Miss Eliza B. Baker—by stating, in response to questions by complainants' counsel (R., 38, 39), that she did not see any weakness in the mental powers of Mrs. Mary I. Campbell at all:

> "No; until *the last month or two before her death* (1893) I noticed that she was a little feeble. I could scarcely call it weakness. I do not think she had her usual *vigor* of mind, *but her mind was clear.*"

Compare this with their testimony (R., 53, 54, 141) hereafter referred to by me. Then she is asked (R., 39):

> Q. "Did she (Mrs. Mary I. Campbell) at any time inform you *of the fact*—(how a "fact?")—that any one importuned her for a gift of any portion of her property?" A. "No."
>
> Q. "Did she at any time complain to you in *any way* about the treatment she had received?" A. "No."
>
> Q. "Now, did *any one ever* say to you that Mrs. Campbell had made complaints?" A. "Complaints of what?"
>
> Q. "Of Mrs. Moore?" A. "No."
>
> Q. "Was there *anything* at *any time*, in conversation between you and *any one*, *tending* in that direction?" A. "No; I do not recollect."

Is Mrs. Laura E. Baker corroborated by this witness? So much for the first two of their witnesses. Who is the third one, and what, briefly, does she testify to?

Testimony of Mrs. Mary K. Campbell (*R.*, 46).

She is the mother of these complainants, and although she may have no *direct* interest in the result of this suit, her interest as mother is something to be considered, and as "committee" of her son, Wm. H. Campbell, Jr., she is a party complainant, and I respectfully submit that she testifies to many things that she is prohibited by law (R. S. U. S., sec. 858) to speak of.

Page *vs.* Burnstine, 102 U. S., 664.

By COMPLAINANTS' COUNSEL (R., 47):

> Q. "Did you ever have any conversation with the elder Mrs. Campbell with respect to the *division of these bonds?*" A. "No, sir; *I never had any conversation.*"
>
> Q. "Did you ever hear from *anybody* that Mrs. Campbell had said *anything* about the *division of the bonds*

and the circumstances under which *the money had been given, as she called it?*" A. "I heard from Mrs. Baker *what Mrs. Baker has just said.*"

Q. "*What did Mrs. Baker state?*"

Now also note particularly what she inadvertently lets drop, and how she tries to smooth it out again:

A. "*She told me that she had given these* $6,000 *to each daughter* TO MAKE THEM EQUAL. That is not right. She said she gave that $6,000 to each daughter because of the importunity, and she made them a promise, before Eloise's death, that if she survived Miss Eloise that she would do it."

If Mrs. Mary I. Campbell ever did tell Mrs. Baker anything about the gift of these bonds or "money" to her daughters, she told her, as the *reason* for the gift, just what this witness *first* says that Mrs. Baker told her, viz., that she did it "*to make them equal,*" for this is exactly what Mrs. Mary I. Campbell herself declares in her written statement accompanying the gift (R., 134), which I shall refer to hereafter. This is in substance the direct examination of their last witness on the question at issue—the gift of these bonds; and *they* have proved by her that Mrs. Baker had told their mother, Mrs. Mary K. Campbell, all about this alleged fraud practiced by these daughters, Mrs. Moore and Mrs. Russell, on their mother, Mrs. Mary I. Campbell.

But it will be observed that we have not *yet* been told *when* Mrs. Baker is alleged to have reported all this to Mrs. Mary K. Campbell; so finally I undertook to find that out, and I asked her (R., 57):

Q. "When did Mrs. Baker first tell you of this alleged gift of $12,000 between Mrs. Russell and Mrs. Moore by Mrs. Campbell?" A. "It was after the death of Miss Eloise."

Q. "How short after the death?" A. "I expect it was *a very short time*, because she told me *just as soon as Mrs. Campbell told her*, and Miss Eloise died *October 1st*, 1885."

So now we have it proved by their own witness that Mrs. Mary K. Campbell, one of the complainants in this proceeding, and the mother of all of the other complainants, *knew all about this pretended fraud* practiced on her mother-in-law, Mrs. Mary I. Campbell, *as far back as 1885*, and—

"she did not say a word to Mrs. Mary I. Campbell about it;" * * * nor did Mrs. Mary I. Campbell ever speak to her on the subject (R., 47).

If Mrs. Baker did tell her what she, *Mrs. Baker*, states, why did not this complainant, Mrs. Mary K. Campbell, say something to Mrs. Mary I. Campbell about it in her lifetime? Why did she wait till nearly eleven years afterwards, nearly three years after Mrs. Mary I. Campbell's death, and some two years after the executors had settled up and distributed all of the personal estate, before charging them with these alleged frauds?

Hammond *vs.* Hopkins, 143 U. S., 224, 252, *ante.*

There is no excuse whatever given in this bill, and certainly none whatever offered by the evidence.

Badger *vs.* Badger, 2 Wal., 87, 95, *ante.*

Lansdale *vs.* Smith, 106 U. S., 391, 394, *ante.*

Is not the other theory, then, the more probable one, viz., that Mrs. Mary K. Campbell knew that Mrs. Mary I. Campbell did it—*as she, Mrs. Mary K. Campbell, inadvertently first let drop in her statement about it*, noted above (R., 47)—"*to make hem equal,*" *just as Mrs. Mary I. Campbell says she did* (R., 134).

Let us now go on and see how reliable is the testimony of this witness.

She admits that she received $1,000 from Mrs. Mary I. Campbell after these gifts of the bonds to Mrs. Moore and Mrs. Russell (R., 48, 58, 59); that she—

> "*never heard* of her (Mrs. Mary I. Campbell) being very charitable *before* her husband's death, * * * *nor*

after her husband's death, *except to me*, I presume that may be considered charity" (R., 48).

Against such *ingratitude* I place her subsequent testimony as to gifts to Miss Mason (R., 139), where she states, *in answer to questions by her counsel:*

"Yes; she *repeatedly did* (befriend Miss Mason) at former times; she wanted to put her in the Home for the Aged—Woman's Christian Home. I think it is upon Thirteenth street. She was *very kindly* disposed toward her."

And see their own exhibits (R., 61), *letters to this witness by Mrs. Mary I. Campbell.* And, in strong contrast with such feelings as this witness gives expression to, see the testimony of Mrs. Moore, *cross-examination* (R., 112):

"From my earliest childhood that was her main pleasure, helping those who were destitute. From my earliest childhood I remember it. *She was always doing it*, and the charitable disposition extended not only to persons who were destitute, but to charitable institutions."

As mentioned by me before, there was a written statement by Mrs. Mary I. Campbell accompanying the gift of these bonds (R., 134), a thing that would have been entirely unnecessary, and which would not have been thought of or requested by Mrs. Moore of her mother had she not learned, from most unpleasant past experience, that they might have trouble *again* with this same sister-in-law. My questions here of this witness have reference to this previous family rupture, made by this same person, because Mr. Campbell had seen proper to leave each of his daughters—Mrs. Moore and Mrs. Russell—$5,000, but without any pretense, as claimed by the complainants in their bill—as will be seen from his will (R., 9, 12)—that by the gift of these sums he had made the shares of the daughters equal to what the son and his (the son's) family had previously received.

So I asked her (R., 48):

> Q. "Did you have anything unpleasant with Mrs Campbell and Mrs. Moore and Mrs. Russell as a result of that bequest (those bequests) of $5,000 in the will of your father-in-law?" A. "Not that I know of."

At the very time she is stating this she has in her possession (R., 52) a statement or letter, not dated—but which the evidence shows was written shortly after the death of Mr. Campbell, which was in 1881, and prior to June 17, 1882 (R., 133)—from Mrs. Mary I. Campbell *to this witness in reference to this very matter,* and which the complainants subsequently introduce in evidence (R., 59), *after* I had offered in evidence a similar one (R., 51, 132, 133), written by Mrs. Mary I. Campbell to her daughter, Mrs. Julia A. Russell,—who was accused of having perpetrated a fraud on her father, by which he was induced to leave these two daughters $5,000 each by his will,—in which she tells them both the true reason why it had been done, as follows:

"I desire to state that the charge which has been brought against my daughter Julia, *as having in any way, either directly or indirectly,* used any influence connected with her father's will, *is false in every particular, especially* with regard to the legacy of $5,000 each to her and her sister. I wish to say that *it was done at my suggestion, without the knowledge of either of them,* KNOWING, *as I did, that our son had received considerably more than either of his sisters. We did it in justice to them, and even this amount did not make them equal to him, as the books now show* $6,897.62 *more than either of them received.*

"I wish my dear children to know that the few days my Heavenly Father may permit me to remain in this 'vale of tears' it shall be my endeavor and sincere prayer that we may live in *peace* and love, *and that when I am gone they may strive to do the same,* and that we may appear before the throne a family chain, not one link missing.

"MARY I. CAMPBELL."

(By a rather ludicrous mistake (among others) of the typewriter who got up the transcript of the record in the supreme court of the District of Columbia, the word "*upon*" has been substituted for that of "*before*" in the sentence "*before* the throne" in the copy of the above statement given by Mrs. Mary I. Campbell to Mrs. Russell—R., 133).

Do we see now any explanation as to why this witness did not speak to Mrs. Mary I. Campbell of what she says Mrs. Baker told her in October, 1885, and do we not also see the motives that actuated this mother in giving them these bonds, as well as those that actuated the daughter subsequently, in desiring some written declaration or statement from her mother when this gift was proposed?

If Mrs. Baker had told this witness what she (the witness) *first* said that Mrs. Baker did, viz, that she did it "*to make them equal*" (R., 47), would she have dared to say anything to this mother about it, after receiving the above letter from her in reference to the former false charges made against one of these same daughters a year or so previous? But if Mrs. Baker had told her what she (*Mrs. Baker*) says Mrs. Mary I. Campbell told her, would she not, most naturally, have at once, upon hearing of such mean, contemptible, cruel treatment, gone to this mother and inquired about it?

And if this old mother had received such treatment at the hands of her daughters and son-in-law, *would she not, most probably, have at least written this witness something about it?* for the testimony shows that she was frequently writing her as well as receiving personal visits from her; yet she never did!

To resume the testimony of this witness: She then proceeds to explain what, in her opinion, was the *real* cause of the unpleasantness then existing between Mrs. Mary I. Campbell and herself, and says (R., 48) it was because she (the witness) came to the conclusion that Mr. Campbell should not have left his property to his wife, for the reason that "*she can do as she pleases. It was left to her.*"

How does this harmonize with the theory of their bill as stated in the sixth paragraph thereof, viz:

"For the purpose of carrying out this *intention* (*that it should be equally divided between their three children*) the said Wm. H. Campbell, on the 16th day of March, 1878, made and published his last will and testament," &c. (R., 2).

(R., 48:) Q. "As a result of that fuss, what took place between you and Mrs. Campbell?" A. "*For some time* she resented it."

Q. "Did you apologize afterwards for having done that—say you were sorry for having made any unpleasantness in the family?" A. "No, sir."

Q. "You did not say anything *like that or write it?*" A. "*I did not write.*"

Let us see if she did not.

Defendants' Exhibit No. 2 (R., 133) is a letter from this witness to the defendant Julia A. Russell, and is as follows:

"WASHINGTON CITY, *June 17th*, 1882.

"DEAR JULIA: As you sent my last letter to Ginnie Moore to read, and as she places the same construction upon it as you do, I write again. It was my intention to have conveyed to your mind that *we had exonerated you and regretted the story had been told upon you.* I am just, even in injustice, and would never injure you either by word or deed. *As soon as I felt that you had been falsely accused I began to make reparation by showing your mother's statement.* The charge against you reached me before your father's death. The crime was so great that I could not believe you guilty, so doubted the accusation *until the will was read. I then believed, seeing the change had been made after your brother's death.* I told you what I had heard at that time; THEN it should have been inquired into and satisfactorily settled. I now know how I am regarded by your family. *All* have turned against me; but I am firmly supported by the consciousness of my own truth, integrity, and honor.

"MARY K. CAMPBELL."

Could not the advice that she here gives Mrs. Russell,—"*then* it should have been inquired into and satisfactorily settled,"—be most appropriately applied in this case? She testifies that she knew all about this alleged fraud as far back as 1885, and yet she "did not say a word to Mrs. Mary I. Campbell about it" (R. 47)!

Four days afterwards, October 28 (R., 56), she again testifies, and admits that she did write.

By referring to the will of Mr. Campbell (R., 9, 10, 11) it will be seen that the only "*change*" made by him in his will was by codicil, appointing new executors, rendered necessary by the death of his son, who was one of the executors, and that what this witness says in this letter about Mr. Campbell having *changed* his will *after* the death of his son—she means by adding the legacies of $5,000 to each daughter—is untrue.

I asked her (R., 49) if she and Mrs. Mary I. Campbell had any conversation about this unpleasantness, and she replies:

> "Mrs. Campbell and I had no conversation in reference to that. She showed by her manner that *she was angry because I criticised her husband's act.*"

Redirect:

> (R., 50:) Q. "What else was there that made you think the will was unjust besides what *Mrs. Kennedy said to you?*" A. "*Mr. Wm. H. Campbell told me* that he intended leaving MORE *to his son than to his daughters.*"

How does this agree with what she and her daughters have distinctly stated in the fifth paragraph of their bill (R., 2), viz:

"The said Wm. H. Campbell and Mary I. Campbell were excellent people, devoted parents, and confided to their beloved children their purposes and intentions in respect to the disposition of their property, *always declaring* that it should be *equally* divided between their three children, Leonidas, Virginia, and Julia"!

Q. "I understand that you had offended Mrs. Campbell by expressing an objection to that will, *one of the reasons being that her daughters, or one of them, had caused that* $5,000 *apiece to be put in the will*, what made you say that?" A. "I do not know."

Q. "How come you to say that Mrs. Russell, the daughter, had anything to do with that $5,000?" A. "*Because Mrs. Admiral Russell* (the wife of the brother of the defendant, Alex. W. Russell), *told me* there was a will made in advance of that will, and after Mr. Campbell's former will, he changed that will, and Mrs. Admiral Russell knew that the will was changed and asked me if I did not think Mrs. Julia Russell had something to do with the changing of the will, *and I did think so.*"

Q. "Now did your thinking so and stating so, cause any unpleasantness between you and Mrs. Campbell?" A. "*Yes; and the whole family.*"

Now in reference to *when* the reconciliation took place:

(R., 51:) Q. "Was it during the lifetime of Miss Eloise or after her death?" A. "*After her death.*"

Q. "How long after her death?" A. "I think Miss Eloise died in 1885, and I *know* it was somewhere along '88."

Q. "*After her death?*" A. "*Yes.*"

As will be seen from the subsequent questions of complainants' counsel, he is desirous of showing that at the time of the gift of these bonds to her daughters (1885), Mrs. Mary I. Campbell and this witness, her daughter-in-law, were on friendly terms again, and that this quarrel, which this daughter-in-law had with this old lady, had all subsided and they were friends again; but he cannot get her *yet* to state this—she does not yet see the real motive. So after I had her identify, *and had introduced in evidence*, the letter or statement by Mrs. Mary I. Campbell, before referred to by me (R., 51, 132, 133), refuting the former false charge brought against Mrs. Russell, *and complainants' counsel had gotten her*

to identify a similar paper which she had received from Mrs. Mary I. Campbell (R., 52, 59)—

> "*At the request of counsel for complainants* an adjournment was had until Wednesday, *October 28th*, at 12 o'clock" (R., 52).

Four days having now elapsed, this same witness is recalled by complainants' counsel and made to begin again and go over this matter of the unpleasantness between herself and Mrs. Mary I. Campbell (against my objection), and, of course, she now brings it all out quite differently, just as their other witness, Mrs. Baker, did, and she now has the reconciliation complete *before* the death of Miss Eloise and before the gift of the bonds to the daughters. The weight to be given to such testimony I leave to the court.

Then she is asked as to the mental condition of Mrs. Mary I. Campbell *after* her return from Philadelphia *in 1892*, and she replies "she was as *weak* and *broken* in *mind* as she was in *body*" (R., 53, 54).

In opposition to this (although it has nothing to do with the matter in controversy—the transfer of the bonds in 1885), I put the testimony, before referred to, *of their own witness*, Mrs. Bradley (R., 38, 39), as well as that of the witnesses called by me, Dr. Peter (R., 79), Mr. Brown (R., 88), Miss Blanchard (R., 92, 93), Mrs. Beall (R., 100, 101), and several others, and also the letter, previously referred to by me, from this old mother herself to Mr. Moore, written November 26, 1890 (R., 135), the day before Thanksgiving day, *and a year and a half only* before her return from Philadelphia, in which she says:

> "May our thanksgivings ascend not only tomorrow but daily, for the many mercies we are receiving from our Heavenly Father. *Why am I permitted to enter my 90th year with so few of the painful infirmities of old age?*
>
> "Sincerely yours, M. I. CAMPBELL."

And I make the same observation in reference to what this witness *says* Mrs. Mary I. Campbell *told* her about being so unhappy at the homes of both of her daughters (R., 53, 54), viz: Why did she (Mrs. Mary I. Campbell) never *write* to her about this; they were corresponding constantly with each other, and this witness says that they were on such intimate and affectionate terms? Can this be true? Can it be reconciled with the tenor of her own letters and with what these other witnesses that I have just mentioned have sworn to? Take, for example, the testimony of Mr. Brown (R., 89), descriptive of his visits to the Moores—these visits, too, were after her return from Philadelphia (1892, 1893):

"I have never been in a household that was as lovely in my life, and I never went away from there without feeling that I had gained something by my visit. I never visited a house where there was any lovelier temperament or atmosphere than there was in that house between the family themselves and Mrs. Campbell. She was one of the family *really* and one of the most beloved members of the family. They showed her every attention, and were perfectly devoted to her, *as she evinced by her words and actions.*"

Then she is asked by complainants' counsel about how she received the $1,000 Mrs. Campbell gave her (in the summer of 1891), and she replies (R., 54):

> "The first check was *enclosed* in a letter to Mr. Moore, which he sent me (R., 58, 59). Now, the other (R., 59); I do not know so much about the other, how I got it, but I do know that Mr. Moore called to see me, for I received the check, and *he expressed pleasure that I had received it. I thought it was through his instrumentality, through his* INFLUENCE, that I received it, *and he said it was not so, and he only wished it was thousands instead of a thousand, showing his friendly relation to me.*"

Here we see the same suspicious thoughts and feelings exhibited by this daughter-in-law as was shown by her on the

death of Mr. Campbell, and which had been so thoroughly and effectually rebuked by the mother, then alive—the same suspicious thoughts and feelings as now, *when she thought this old mother's lips were surely closed.* But experience teaches one something, and so when their mother expressed the desire to give them these bonds (R., 123, 125, 134), "*to make them equal*" (to the son), *as this witness herself first stated that Mrs. Baker told her* (R., 47), they did not forget the unpleasantness they all had so recently gone through with this same daughter-in-law; for if she made similar charges again this old mother might not then be living to again deny them and assume the entire responsibility for the act and relieve them of the false accusation, as she had done before (R., 59, 132). So most properly and naturally they asked her to give them some statement in writing (R., 123, 134, hereafter referred to by me) to *again* show this sister-in-law if she should *for a second time* bring false charges against them and *again* seek to make trouble in the family.

As this witness had stated (R., 50) that *some one told her* that Mr. Campbell had changed his former will, and that his daughter Julia, *she believed*, had something to do with it, I asked her—what I felt sure was the fact—if her own father (the late John C. Kennedy, Esq.) had not drawn this very will, and she answers (R., 55): "I had forgotten it entirely; but now that you say so I remember that he did, but I had forgotten it."

She changes this afterwards (R., 57) in response to inquiries from her counsel, and says that her father did not write this will. It was evidently written by a lawyer, and as I afterwards show (R., 116) that the draft or form of the codicil is entirely in the handwriting of the father of this witness, I think the natural and reasonable conclusion is, that he did write this will, too, *as she first admitted.* I mention this only to show in corroboration of what Mrs. Mary I. Campbell herself said:

"That the charge which has been brought against my daughter Julia (Mrs. Russell), as having in any way, either directly or indirectly, used any influence connected with her father's will, *is false in every particular*" (R., 59, 132).

This witness had the idea, however, as will be observed from her testimony (R., 55)—"Her (Mrs. Mary I. Campbell's) son only lived a few months *after* the death of her (Mrs. Mary I. Campbell's) husband"—as well as from her letter, which she at first denied writing, to Mrs. Julia A. Russell (R., 49) and which I introduced afterwards in evidence (R., 133)—"I then believed, seeing the change (in Mr. Campbell's will) had been made *after* your brother's death"—that Mr. Campbell had changed his will just before his death by adding the two legacies, of $5,000 each, to his two daughters. An inspection of the will, however (R., 9, 10, 11), shows that it was made March 16, 1878, and the codicil September 7, 1878, the son having died August 15, 1878 (R., 54), and the only change made in the will by the codicil, as mentioned before, was the appointment of additional executors, rendered necessary by the death of the son, who was one of the executors.

Now, *as the complainants had shown* (R., 52) that they received from Mrs. Mary I. Campbell a letter or statement (R., 59) similar to the one she sent her daughter, Mrs. Russell (R., 132), in reference to this former charge, *like the present one, of undue influence*, I asked this witness (R., 55):

> Q. "*Upon the strength of that letter* you became satisfied that the charge brought against Mrs. Russell *was false*, did you not?" A. "Yes; I suppose I can answer that."
>
> Q. "In other words, *you believed* what Mrs. Campbell had written in that letter?" A. "*I did; yes;* and she exonerated her daughter."

Upon reading what Mrs. Campbell says in this letter, which this complainant has just said *she believed*, it will be

observed that Mrs. Campbell not only refutes the false charge brought against her daughter, Mrs. Russell, but also tells this daughter-in-law (R., 59):

> "*We did it in justice to them (the daughters), and even this amount (the legacies of $5,000 each) did not make them equal to him (the son), as the books now show $6,897.62 more than either of them received.*"

Now, whatever this daughter-in-law of Mrs. Mary I. Campbell may accuse her sisters-in-law and brothers-in-law of doing, she, and no one else, up to the time of bringing this suit, has ever accused this old mother of telling a falsehood or of misrepresenting anything to any one. *Of course,* "she *believed* what Mrs. Campbell had written in that letter," and she knew, as well as she knows anything in this world, that the son (her husband) and his family had received, over and above the amount of the legacy left by Mr. Campbell to each of his daughters, *exactly what the mother says he had received.* Emphasis was laid by counsel, in their arguments before the lower courts, that the defendants did not produce "the books" and *prove* that what Mrs. Mary I. Campbell has stated, as to the amount received by the son in excess of what was received by each of the daughters, was true. I respectfully submit that no such duty devolves upon defendants, for the representative of the son's family, Mrs. Mary K. Campbell, has had in her possession for about fifteen years—since about 1881—as admitted by her (R., 52), a copy of this statement Mrs. Mary I. Campbell sent her (R., 59), of which the above is part, and yet there has never been any protest by her or any one else against its correctness (R., 47), and this representative of the son's family has just stated that *she* "*believed* what Mrs. Mary I. Campbell had written in that letter," and *if this admission is not true, why, then, did not the complainants call for the books?*

The letter similar to this one, let me observe, *I had already introduced in evidence before the complainants finished their*

examination of this witness (R., 51). What explanation do they offer as to its contents, for it is a complete answer to the whole theory of their bill? Not a word!

Counsel for complainants then announced that this closed his testimony-in-chief (R., 57).

Three days afterwards, October 31, 1896 (R., 57), this witness comes back again, has her testimony read over to her by the examiner (see Cert. of Ex., R., 149, 150), and again makes more changes and corrections.

If I had submitted no testimony, I feel quite sure, under the showing *the complainants* themselves have made, the court would have been fully justified in dismissing their bill, not only on the ground of laches, for the complainants themselves show that they knew all about this gift "a very short time" after it was made in "October, 1885," (R., 57), yet no excuse is offered, either in their bill or their testimony, for the delay of nearly eleven years, but also because they have not offered a word of testimony about any gift or transfer whatever of *bonds*, the obtaining of which by alleged undue influence is their whole case; and, to go a step further, I respectfully submit that even if there had been no laches, and such testimony as they have offered were true, and could, for the sake of argument, be applied to the gift of these bonds, it would be wholly insufficient for the purpose sought here to be accomplished by it (Conley *vs.* Nailor, 118 U. S., 127; Mackall *vs.* Mackall, 135 U. S., 167). But as my clients were accused of perpetrating frauds, and with breach of trust, they desired that the whole case should be heard; so we proceeded with our evidence and took the testimony of fifteen witnesses, four of whom were these defendants.

I was aware of the fact that *perhaps* because these defendants are husbands and wives, they could not testify at all; but it appeared to me that it would make rather a bad impression if I did not call them and have some explanation from them as to the frauds which they are accused of prac-

ticing on this old mother. It would seem rather remarkable that in an *equity* court persons could be accused of such things as these defendants are here charged with being guilty of, and while the person who has twice now been the cause of so much family unpleasantness, a complainant herself and *the mother of all the other complainants*, can swear to most anything she pleases against them, they cannot open their mouths in their own defense. I took the view that it would be safer and better to have them called and sworn, interrogate them as to the truth or falsity of what they were accused of having done, *and offer them for cross-examination.* If the court should be of opinion that they could not testify at all, it would be very easy to leave out, in the consideration of the case afterwards, their testimony entirely.

Stickney *vs.* Stickney, 131 U. S., 227, 237.
Hopkins *vs.* Grimshaw, 165 U. S., 342, 349, 351.
Smith *vs.* Cook, 10 App. D. C., 487.
Beall *vs.* Brown, 6 Mack., 574, 576.

Counsel for complainants saw proper to cross-examine only one of these defendants, Mrs. Moore; but when the case came on to be heard he volunteered to inform Mr. Justice Hagner that he—

> "expressly waived objections to the competency as witnesses of F. L. Moore, Alex. W. Russell, Mrs. C. V. Moore, and Mrs. Julia Russell."

And this stipulation his honor had them put in writing and file (R., 150). For the purposes of this case it is immaterial to me whether this testimony is actually considered or not. We have, I feel sure, met and fully answered every material part of all competent testimony offered by the complainants, without the aid of the testimony of these defendants.

Very briefly, then, let me show what has been testified to on behalf of the defendants Moore and Russell: First, call-

ing attention to the fact, that while, as will be observed, counsel for complainants had his two witnesses (Mrs. Laura E. Baker and Mrs. Mary K. Campbell) go over and over again their statements in relation to what they were testifying to, and, when he could not get the testimony just as desired, adjourned the session for several days, and had the witness come back and go over it again, and then a few days after that come back again, have the examiner read the testimony all over to her and make changes again, I purposely did not ask any of our witnesses to go over their testimony, I asked for no adjournments, and our witnesses have never been permitted to make any corrections whatever in their testimony. There is presented on our side, *just as the words describing it dropped from the lips of the different witnesses*, a true picture of the *real* home life of Mrs. Campbell, particularly during the eight years that she resided with her daughter Mrs. Moore, this being the period covered by the testimony of the complainants' chief witness, Laura Ellen Baker, and I think it will be impossible to form any other opinion, after reading this testimony of the persons who lived in the same house with her and were constant observers of everything that transpired in the family (her maids), as well as that of the frequent visitors to the house who saw and talked with her, than that she was, notwithstanding what Mrs. Baker has sworn to, *most happy* there during all this time, and that she dearly loved and was in return, as she well knew, equally well beloved by each and every member of the household. The weight due such testimony so taken, compared to what has been testified to by the witnesses for the complainants in the manner in which it was finally obtained, is, I think, worthy of notice.

Testimony for Defendants.

Mrs. Emily Allen (*R.*, 71).

She was Mrs. Mary I. Campbell's maid, at the Moores', from the spring of 1881—the death of Mr. Campbell—to the fall of 1883 (R., 71), Mr. Campbell having died May 21, 1881 (R., 3).

In substance she testifies (R., 71, 72) that Mrs. Mary I. Campbell was—

> "of sound mind, and as far as any disagreeableness is concerned I never heard of any. She was always kind and good to Mr. Moore, and also to her grandchildren, Miss Ella and Mr. Will. They were just as kind and good to her as they could be, and everything was done for her comfort."
>
> "*She would often say that she thought Mr. Moore was so kind and good to her, and Mrs. Moore also;* always said they were so kind to her; done everything that she thought they could for her comfort."
>
> Q. "Did she seem to have any *fear* of Mr. Moore?" A. "No, sir. I don't think she had any fear of anybody. She had a mind of her own, and she did not fear anybody. She was not afraid of anybody, I don't think."
>
> "She was a woman who gave a great deal to charity."

Mrs. Margaret Courtney (*R.*, 75).

She occupied the same position—as maid—from October, 1883, to June, 1886, at Mr. Moore's (R., 75). This covers the period during which Mrs. Campbell, according to the testimony of the complainants' witness, Mrs. Laura E. Baker, complained of the treatment she was receiving from Mr. and Mrs. Moore, as well as the date when these U. S. bonds were given by her to her two daughters.

> "Mrs. Campbell was very well. Occasionally she would have little bad spells, but everything was very

pleasant indeed. *Mrs. Moore was perfectly devoted to her mother. I do not remember of ever hearing an unkind word spoken, and Mrs. Campbell always spoke of Mr. Moore in the highest terms.*"

Q. "Did you ever observe any of the Moores listening at the door to any conversations?" A. "Never."

Q. "Did Mrs. Campbell ever refer to any such thing as that?" A. "Never, in my presence."

Then she states (R., 79) that Mrs. Campbell—

"paid a visit to her granddaughter's, Mrs. Robert Tenney, *a very short time* after the death of Miss Eloise (which was on October 1st, 1885), and returned in December."

"She was very pleasant and very charitable. She was always willing to help any one in need; devoted her leisure moments providing for the poor in winter."

Q. "What was her condition mentally?" A. "Well, Mrs. Campbell was a lady of sound mind, and one that could not be influenced."

Q. "What do you mean by influenced?" A. "*She could not be persuaded to do anything she did not want to do. She had a will of her own. She was very bright, and of remarkably good health.*"

Cross-examination (R., 77):

"*Whenever she called Mr. Moore's name it was always in the kindest manner.* She spoke particularly of his being very charitable and pleasant in his home to everybody. * * * *She always spoke of him in that way.*"

Q. "What do you know about this kindness?" A. "Well, Mr. Moore was a very particularly kind gentleman in his home. I have the first time to hear him speak an unkind word to a servant in his house."

Dr. Armistead Peter (*R.*, 79).

He was the family physician. He has a very troublesome impediment in his speech, and the stenographer has the dates of his visits to Mr. and Mrs. Campbell from 1881 to

1885 and 1891 to 1893. The latter period was from 1892 (when Mrs. Campbell returned from Philadelphia) to 1893. It is of no consequence, however, and I did not recall him to correct it.

He states (R., 79):

"Mrs. Campbell was perfectly well, mentally and physically, and her family were always very friendly and good to her."

Q. "About how often were you called in to attend her for sickness?" A. "Not very often; several times during 1881 and 1882 and several times during '91 and '92—altogether about fourteen or fifteen visits."

Q. "*How did you find her mentally always?*" A. "*Perfectly sound; perfectly well mentally.*"

"I always found her perfectly qualified to transact any business and answer any question I put to her. * * * *She had a very strong will power.* * * * *Always bright and happy* when I was with her."

Cross-examination (R., 80):

Q. "*You speak of her having exhibited great will power?*" A. "*She had a very decided will power.* * * * Always talked very clearly and expressed herself very well."

Mrs. Carrie Carlisle (*R.*, 81).

She acted as her maid from July, 1892—very shortly after Mrs. Campbell's return from Philadelphia—till her death, in August, 1893 (R., 81).

(R., 82:) Q. "What was her physical and mental condition when you first went there, and how did she continue up to her last illness?" A. "Splendid. Her mind was as perfect and cheerful as could be."

Q. "How long was she sick in her last illness?" A. "Only three days."

Q. "Do you remember any one calling there while you were waiting on Mrs. Campbell during that period?" A. "Yes, sir; she had several callers. A Mrs. Mary K. Campbell called several times, and in one instance she

remarked to Mrs. Campbell about her financial affairs; said that she had a good deal of trouble in that respect; and Mrs. Campbell then remarked to me—asked me if I would give her her money box, which I did and then left the room."

Q. "Did you ever find any one listening at the doors there, at Mrs. Moore's?" A. "No, sir; never. Whenever Mrs. Campbell had company I always left the room, but she would remark upon my returning, why did I leave the room? I told her I thought I ought to leave. Probably there was a little confidential matter she would like to have with her friends. She said, no; there was no occasion for me to leave, *as there were no secrets.*"

Upon cross-examination she was asked:

(R., 84:) Q. "Was it a matter of daily occurrence, then, expressions of kindness and affection upon Mrs. Campbell's part towards Mr. and Mrs. Moore?" A. "Every day. *It was a very common occurrence.*"

(R., 85, 86:) "You rarely hear of persons being so devoted as that family were. *I have been around to several families, and have not seen such devotion;* * * * never a cross word spoken."

Thos. Janney Brown (*R.*, 88).

He visited the house nearly every week *during the last year of Mrs. Campbell's life* (R., 88) upon her return to the Moores from Philadelphia. He says he talked with her frequently, and—

"there was nothing that one could possibly discover about her mind that was in any ways weak or impaired. * * * She was as well preserved at that age as anybody I have ever had the pleasure of knowing" (R., 88).

The family played whist frequently, and he remembers on one occasion, as illustrative of her bright disposition, when she was about to retire in the evening, after they got

started at a game, she remarked, "When you divide the spoils don't forget the *widow*."

As to the relationship that existed in the family, he says (R., 89):

> "*I have never been in a household that was as lovely in my life, and I never went away from there without feeling that I had gained something by my visit. I never visited a house where there was any lovelier temperament or atmosphere than there was in that house, between the family themselves and Mrs. Campbell. She was one of the family, really, and one of the most beloved members of the family. They showed her every attention and were perfectly devoted to her, as she evinced by her words and actions.* * * *
>
> "*They treated her in the most tender way. Every one loved her. She was very bright.* * * *She had sufficient will power for one of twice her size.* * * *She was very decided in her opinions.*"

Sarah J. Reeder (*R.*, 90).

She attended to the washing, for Mrs. Campbell, at the Moores' (R., 90), and testifies to observing nothing but kindness and pleasantness existing always at this home. She was there when Mr. Campbell died, when his sister, Miss Eloise, died, as well as upon the death of Mrs. Campbell. She also speaks of the three rooms occupied by Mrs. Campbell in the third story as being about the nicest in the house—large bed-room, dressing-room, and bath-room (R., 91).

Miss Amy Ella Blanchard (*R.*, 92),

the authoress of several books and at one time editor of the Home Department of the *Church Standard* (R., 94), is the next witness (R., 92). She made—

> "quite long visits at intervals during the entire period of Mrs. Campbell being there" (at Mrs. Moore's); "was present when Mrs. Campbell died; * * * called upon her very often at Mrs. Russell's" (in Philadelphia).

Descriptive of Mrs. Campbell, she says (R., 92, 93):

"She was an unusually well-preserved person, *of remarkably clear mind—a person of a great deal of determination and decision*—and the relations between the families in both cases, both of Mrs. Russell's and Mrs. Moore's, I *always* found to be very pleasant in every possible way, * * * and her expressions of affection, I suppose, were unusual, because I think old people are frequently neglected, not because people wish to be unkind to them, but because, I think, they think they require less care than they do and less attention, and it is always appreciated by old people, because they seldom get it; and at Mr. Moore's I think *she was the central figure of the house, around which every thought circled.* She was the object of attention of the household. I think she was thought of every day, and they tried to think of some pleasant thing for her entertainment during the day, and *her devotion to every member of the family was marked.*"

"*She has more than once spoken to me of her affection for Mr. Moore*, and I know of one occasion that Mr. Moore had been in the room and had bid her good morning or good night she said, '*What a good, good man that is; I am so thankful for such a son;*' and when I went to see her at Mrs. Russell's—her family, of course, being mutual friends, mutually interested in the family—*she would speak of them all with the utmost affection*, when she had heard from them; how interested she was in their affairs, etc."

Then she testifies to how interested Mrs. Campbell was in all charitable objects, etc. (R., 93, 94).

Upon cross-examination (R., 94) she testifies that she was at the Moores' for about two weeks, *beginning about October* 10, 1885, just after the death of Miss Eloise, and remained till about the 24th of the same month.

This was during the time that Mrs. Baker *subsequently testified* that the second of those mysterious visits of hers took place *at the Moores'* (R., 45).

Upon redirect examination she says (R., 95, 96) that—

> "*Mrs. Mary I. Campbell was not at Mrs. Moore's when I got there.* I do not know when she left. * * * *She was not at the house during my visit at that time.* * * * No, sir; she was at Mrs. Tenney's, her granddaughter's, in Georgetown * * * and did not return to the Moores' at any time while I was there."

Annie Amelia Allen (*R.*, 96).

I called this witness simply to show, and she so testifies, that Mrs. Campbell was staying at Mrs. Tenney's, where the witness lived, from October 10, 1885 till about the middle of the following December, and was not then at Mrs. Moore's, as stated by Mrs. Baker in her corrected testimony above referred to.

Mrs. Elizabeth D. Beall (*R.*, 100).

She resides at 1670 31st street N. W., and is "*the next-door neighbor south of Mrs. Moore*" (R., 100).

> Q. "Who is the next-door neighbor north of Mrs. Moore?" A. "Mrs. Mary Duncan Bradley" (who was the first witness called by the complainants to *corroborate in advance* Mrs. Baker, their second witness, with the result before referred to).
>
> Q. "Over what period of time did your acquaintance extend?" A. "Well, I met Mrs. Campbell at intervals before she came to Georgetown to live. When she visited at her daughter's I frequently met her, and *knew her quite well* after her residence at her daughter's."
>
> Q. "Had you or not any opportunities to observe the kind of woman she was in character, and her mental and physical condition?" A. "*Yes; ample opportunity.*"
>
> Q. "Will you state how she impressed you as to her mental and physical condition, and what kind of character she evinced, to your mind, as to will power?" A. "When I first knew her she was very active, both physically and mentally; *always a woman of strong, decided*

character, but most affable in her manner always; very attractive old lady to me. Towards the latter part of her life she was not so active coming up and down the hill as at first. She walked, walked up and down the hill. Later in life she did not do that; she would use the carriage. *To the last of my seeing her she was most active in mind, a woman of most perfectly clear judgment, and not at all a person who was undecided in any way. A strong, firm, decided character, evincing no evidence of weakness, mentally, certainly, and only that of advanced years physically.*"

Then in reference to the family relations she says (R., 101) she observed—

"*nothing but the most constant affection and attention* due to any old lady and to their grandmother and mother; and, on the contrary, I made the remark once on my own porch that *Mr. Moore's* voice took quite a different tone in speaking to Mrs. Campbell. *There was nothing but deference and respect* which is not accorded many people of the same age. I *saw nothing but deference and respect and affection always.*"

Q. "Did she seem to be *in fear of Mr. Moore* at all?" A. "*Not at all.*"

Q. "Did she complain *ever* of any ill-treatment she received from Mr. or Mrs. Moore?" A. "*Never in my hearing or to my knowledge.*"

Then she speaks of hearing of her generosity to different institutions, and of her being a very benevolent woman.

Julia A. Russell, Christiana Virginia Moore, Alex. W. Russell, Fred. L. Moore (*R.*, 103, 105, 113, 117).

To the competency of these defendants objection was made by the complainants' counsel when I first called them to testify; but upon the hearing of the case, as before mentioned, the objection was withdrawn (R., 150).

They all deny most positively that they ever made any suggestion, even, whatsoever, to Mrs. Campbell about the giv-

ing of these bonds or any money to Mrs. Moore or Mrs. Russell (R., 103, 107, 113, 118), and they all in the same manner deny that there was ever any unpleasantness existing in their homes while the mother resided with them. They were perfectly devoted to her, and she to them. The only moneys that they received from her, outside of the usual Christmas gifts of $100, being $1,000 to each daughter in 1883, referred to in her letter of August 27, 1883 (R., 136), $100 at another time to Mrs. Russell, when she was under unusual expense by reason of the sickness of her son (R., 103), $125 each to Mr. Moore and Mr. Russell (a gold watch to the latter costing that amount), as special Christmas gifts, referred to in her letter to Mr. Moore of March 8, 1887 (R., 135, 136), in which she writes:

> "Now, I wish to say that at Christmas I gave Mr. Russell a watch which cost $125, and I would have given my other son-in-law the same amount in greenbacks, but my bank threatened suspension about that time, which denied me the pleasure. You will now accept a check for the amount, with best, *best* wishes for a happy Christmas. Better late than never," etc.

And $166.66 to each of said sons-in-law, to make up their commissions, on the settlement of Mr. Campbell's estate, to $500 apiece (R., 116, 119).

The exhibit filed with the answer of Moore and Russell, executors (R., 34, 35), shows that the three executors of Mr. Campbell's estate, Moore, Russell, and Maury, had charged $1,000 commissions on $49,030.90, the *face value* of the personal estate, in their account, which was $333.33 apiece. Mrs. Mary I. Campbell subsequently "*voluntarily*" gave the two sons-in-law $166.66 each, additional (R., 119), to make their commissions equal $500 each. The law allowed them to charge about $3,500, which is about 7 per cent. on the *face* value of the inventory, $49,030.90 (R., 9); the act of Maryland of 1798, chapter 101, subchapter 10, section 2, in force here, providing: "His (executor's or administrator's) com-

mission (which) shall be, at the discretion of the court, not under five per cent. nor exceeding ten per cent. on the amount of the inventory;" and I need hardly add that, as a rule, and certainly whenever asked for, the amount on which the commission is calculated is the *market*, not the *face* value of the different stocks and bonds composing the inventory.

They all testify to her lovely Christian character, to her generosity to numerous charities, and to her remarkably good health and strong will power.

Mrs. Russell identifies (R., 104) the letter written her by Mrs. Mary K. Campbell (R., 132) relative to the former unpleasantness in the family, created by previous "false charges," as well as the letter or statement (R., 132, 133) sent her by her mother, relative thereto and denouncing the same; and testifies to the different gifts she received from her mother, &c.

Mrs. Moore gives as the reason for her mother leaving her in June, 1886 and going to reside with Mrs. Russell, that she was obliged to close up her house on account of her own poor health, and that she and her family went abroad for quite awhile (R., 112); less than a year before which time, November 19, 1885 (R., 107), she (Mrs. Moore) had a serious surgical operation performed, and her house was closed up from about "*October* 10 *or* 15, 1885," *till* "*December* 13 *or* 14, 1885," *and her mother was then staying at Mrs. Tenney's* (Mrs. Moore's married daughter) (R., 106, 107). *This is the very time finally fixed by Mrs. Baker for the second one of those alleged "secret" conversations between her and Mrs. Campbell* AT MRS. MOORE'S (R., 45)!

As to any conversation having *ever* taken place between her and Mrs. Baker, as testified to by Mrs. Baker (R., 41), and Mrs. Baker's daughter (R., 141), she denies most positively and gives *three* very good reasons to sustain what she swears to (R., 106), viz:

1st. "She (Mrs. Campbell) never was in her dotage, her mind was always clear."

2d. "I never in my life heard of my mother saying anything against me to any one; therefore I could not have asked Mrs. Baker not to believe what I never suspected my mother of stating."

3d. "At the very period—in fact this period at which she (Mrs. Baker) has *finally fixed* for this conversation, I was in New York, in the hands of a surgeon. Our house was closed. My mother was spending about two months with my daughter, Mrs. R. B. Tenney, 3108 Q St., Mr. Moore and my daughter being in New York with me."

In reference to the relations existing between her husband and her mother she says (R., 108):

"*My mother was devoted to him; she spoke of him constantly. He took the place of her dead son. He certainly could not have been more affectionate and tender to his own mother than he was to my mother.*"

As to her mother's charitable disposition, she says:

Cross-examination (R., 112):

"*From my earliest childhood that was her main pleasure—helping those who were destitute. From my earliest childhood I remember it. She was always doing it*, and the charitable disposition extended not only to persons who were destitute, but to charitable institutions."

She is then shown a paper, in the nature of a little testament, written by Mrs. Mary I. Campbell (R., 59, 60), dated "Phila., *M'ch 22nd*, 1886," when the witness had just stated that her mother went to Philadelphia in *June*, 1886, and she is asked whether she "still adheres to her deposition" (R., 112), and she says that she does. The explanation is a very simple one. Her mother merely made a mistake, three months after the *new year* began, and put the figure 6 for 7 in the year. Many of us have made similar mistakes.

The witness also says (R., 112, 113): "My mother went to Philadelphia to pay a visit, after my father's death," but

that she cannot remember when it was. The letter written to Mr. Moore (R., 136) shows that it was during August, 1883.

Mr. Russell testifies (R., 114) to going from Philadelphia to Washington on October 5, 1885, upon word received from Mr. Moore, to transferring the bonds to Mrs. Campbell, and returning the same day, hurriedly, he being then in charge of the navy pay office in Philadelphia, and that he did not know of this gift from Mrs. Campbell till his wife returned to Philadelphia. He identifies also the receipt (R., 133) from Mrs. Campbell for these bonds.

Mr. Moore testifies (R., 118) to the relations existing between him and Mrs. Campbell as—

> "*the relations of a child to a mother, as far as it was possible. I think she thought of me as a son, and I did try to do a son's part by her in every way.*"
>
> Q. "Had she any fear of you?" A. "None whatever. *She had no fear of any one.*"

In answer to my inquiry as to how these bonds were transferred—after telling him that he could not testify as to any statement made by her to him—he states (R., 118) that "she went to the United States Treasury Department with me and made the transfer," on October 6, 1885 (R., 119).

He then explains (R., 119) how he had forgotten to file the receipt given the executors for these bonds by Mrs. Campbell, and that he only found it very recently—"five or six weeks ago."

The fact, as testified to by Mrs. Moore (R., 106, 107), that she and Mr. Moore went to New York just about this time, "between October 10th and 15th, 1885," to make arrangements for the surgical operation that was soon afterwards, November 19, 1885 (R., 107), performed on her, accounts, too, for his forgetting about it.

He then testifies (R., 120) to the fact, that at the time of the gift of these bonds Mrs. Campbell was worth about $89,000; that her entire personal estate had all been settled

up, the most valuable piece of real estate sold, and the proceeds distributed, *and that there only remains* the one piece of real estate—on E street N. W., which the executors have twice attempted to sell, but without success—there being no bidders—and which they placed in the hands of the real-estate firm of Graham & Campbell, the former being the husband of the complainant Edith G. Graham and the latter the complainant J. C. K. Campbell, to endeavor to sell for them. "And we were notified by counsel for the plaintiffs that we should not sell it" (R., 120).

In conclusion, he denies the silly story, told by Mrs. Baker (R., 42) and her daughter (R., 140), of listening at the door of Mrs. Campbell's room.

Return J. Meigs (*R.*, 116).

I called this witness merely to prove that the draft or form of the *codicil* to the will of Wm. H. Campbell (R., 133, 134) is all in the handwriting of the late John C. Kennedy, Esq., the father of the complainant Mary K. Campbell; the natural inference being that he also prepared for Mr. Campbell the draft or form of his *will* proper, *just as was first admitted by Mrs. Mary K. Campbell* (R., 54, 55), (the will and codicil being admittedly holographic).

I show this simply to corroborate what Mrs. Mary I. Campbell herself tells us in her statements (R., 59, 132, 133)—

> "that the charge which has been brought against my daughter Julia as having in any way, *either directly or indirectly*, used any influence connected with her father's will, *is false in every particular*. Especially with regard to the legacy of $5,000 each to her and her sister," &c.

Miss Mary Ella Moore (*R.*, 121).

The last witness called by us is the daughter of the defendants, Mr. and Mrs. Moore, and, *next to Mrs. Mary I. Campbell*, she is our most important witness, she having been

present when the conversation took place about the gift of these bonds. She says (R., 121):

> "I think grandma (Mrs. Campbell) was an unusually affectionate woman towards her children, and we certainly did everything we could to render her life happy with us. *She was very devoted to us all.*"
>
> "She was remarkably well for a woman of her years, and *mentally she was the companion of us all. I never saw as bright a person for her years in my life.*"
>
> "*She had a very decided will. It was almost impossible to influence her if she thought differently.* * * * *She often expressed herself as being very happy with them, and appreciated all that they did for her, and I think she was unusually fond of father.*"
>
> Q. "Did she ever evince any fear of him?" A. "Not the slightest. She did not fear anything but horses."
>
> Q. "Did you ever listen at her door to any conversation?" A. "I never did."
>
> Q. "Did you ever find any of the family doing it?" A. "Never."
>
> (R., 122:) * * * "I know that she gave to a great many objects and people, and was interested in all charitable objects, especially the poor. * * * Very often she talked over a great many charitable objects and people with me. * * * She left there (Mrs. Moore's) between the 10th and 15th of October, 1885, and stayed at Mrs. Tenney's until the middle of December."

She then identifies the handwriting of the different letters and statements introduced by me in evidence, including the paper marked "Def'ts' Exhibit No. 5" (R., 123).

> Q. "Miss Moore, I hand you paper marked 'Def'ts' Exhibit No. 5,' and ask you to state, as near as you can remember, the conversation that took place, and when it took place, that gave rise to the writing of that paper." A. "Well, it was on the evening of October 5, 1885. My father and uncle had attended to business of grandma's at the Treasury, and when my father returned he told my grandmother of the business."
>
> Q. "Did all this take place in your presence?" A.

"It was generally talked of. I think I heard it all. It was after dinner. Grandma usually came down to dinner those days, and we were all sitting in the back parlor—my mother, my grandmother, my father, my aunt, Mrs. Russell, and myself—and grandma, with a little formality, said: 'Mr. Moore, there is a little matter of business I would like to attend to before Julia returns to Philadelphia'—her daughter—and then she said she thought she would like to give them the bonds that had that day been transferred to her. I was surprised beyond everything, and so were my parents and my aunt, and everybody was greatly pleased about the matter. My parents were surprised, and expressed themselves appreciatingly and gratefully; and after a few minutes my mother said to my father, 'Don't you think it would be well to have something in writing regarding this matter, as we have had this previous trouble with Mary (Mrs. Mary K. Campbell) about the legacy of $5,000.' My grandmother leaned over, not having heard it all, and said, 'What was that about Mary?' My mother then repeated it to her and asked her if she did not think it would be well to give something in writing so stating, and she said, '*Oh, yes, certainly, by all means.*' And she stayed there a few minutes quietly, and went to her room earlier than was her custom—I suppose to think the matter over. The next day she went with my father to the Treasury Department on this business, and afterwards wrote this paper—at least I saw the paper a short time afterwards * * * in my mother's possession."

This important paper (R., 134), all in the handwriting of Mr. Mary I. Campbell (R., 123), and before referred to by me, is as follows:

"GEORGETOWN, D. C., *Oct. 6th*, 1885.

"I have today voluntarily, without suggestion from any one, given to my two daughters the 4½ and 4 per cent. United States bonds coming to me from the estate of my husband, amounting to thirteen thousand dollars at par, thus equaling their share with the amount received by their brother and his family.

"MARY I. CAMPBELL."

(At the request of counsel for complainants the session was adjourned till the next day, to enable the examiner to write out the testimony of this witness before cross-examination.)

The testimony being ready, the *cross-examination* began the next day, and in response to questions from complainants' counsel, relative to their witness, Mrs. Laura Ellen Baker, she says (R., 124):

> "My grandmother always knew her. We have known her all of our lives, and she used to come to see grandmother quite frequently. Grandma was very kind to her. *She was always doing for her in every way; felt very sorry for her. She had a very hard life.*"
>
> Q. "Was she any connection of your grandmother?" A. "Well, my grandmother's brother married a third wife—her mother-in-law."
>
> Q. "If Mrs. Baker told the truth in her representation of what your grandmother said to her, have you any doubt what your grandmother said to her was the truth?" A. "My grandmother was a very reticent woman about her business affairs. She did not talk to the family about them. *Whatever my grandmother told her was the truth. I don't believe she told her anything.*"
>
> Q. "That is another thing." A. "Well, I stick to that."

She is then asked to repeat what was said by her grandmother on the evening of October 5, 1885, and she says (R., 125):

> A. "She said, Mr. Moore I have a little matter of business I would like to arrange, or settle, before Julia returns to Philadelphia. I wish to give those bonds which were transferred to me today—divide those bonds between Julia and Jennie to make them equal with their brother. *That was the import.*"

Counsel for complainants compare the present case to the one decided by this court, reported in 8 How., 183—Taylor *vs.* Taylor *et al.*—because of the giving of this paper by the

mother. I respectfully submit that the cases do not resemble each other at all, and when I come to discuss the question of undue influence I will show the marked difference between the two, merely observing here that the testimony of Miss Moore, explaining the circumstances attending the giving of this paper, taken in connection with the fact that the same mother had found it necessary only a few years previous thereto, as before shown (R., 48), to make a somewhat similar written declaration (R., 132, 133) to relieve one of these same daughters from a similar false charge, as embodied in the allegations here, when this same daughter-in-law had accused her of having unduly influenced the father to leave her and her sister $5,000 by his will, shows that it was a most natural and proper thing to do, and in the light of past and present experiences it would have been very unwise for them not to have requested "something in writing" from their mother, showing the circumstances attending the giving of these bonds.

Upon the completion of the cross-examination of this witness the defendants closed their case.

What, briefly, have we proved?

1*st*. *That even this alleged conversation* which Mrs. Baker testifies she had with Mrs. Mary I. Campbell, in which Mrs. Campbell is said to have stated that she had, in compliance with her previous promise to them, "divided $12,000 equally between Mrs. Moore and Mrs. Russell" (R., 41), could not have taken place, as Mrs. Baker *first* testified, "less than a year before Mrs. Campbell's death," in her room in the *third* story "under the mansard roof" (R., 40), for the reason that she did not occupy a room there during this period, her room being on the second floor (R., 92, 93, *et al.*).

2d. It could not have taken place at the Moore house "a month or six weeks after the death of Miss Eloise Campbell," as *afterwards* testified to by this same Mrs. Baker (R.,

44, 45), because, as we have shown, Mrs. Campbell was not there then, but was staying at her granddaughter's, Mrs. Tenney's, the Moore house being practically closed (R., 76, 94, 95, *et al.*).

3d. From the lovely Christian character of this old lady, as evidenced by her own letters, as well as by her will (R., 12, 13), *and the testimony of all of the defendants' witnesses*, she did not tell this Mrs. Baker, or any one else, any such silly falsehoods as Mrs. Baker swears to, at any time nor at any place. Leaving out entirely the testimony of all of the defendants' witnesses, and *judging her solely by her own letters and written declarations*, what an old hypocrite and story-teller Mrs. Mary I. Campbell would have been if what Mrs. Baker has sworn to was the truth!

But that she was one of the loveliest of truly Christian women, "a woman of strict integrity and truthfulness," is admitted even by the complainants' own witness (R., 143).

Mrs. Baker is "contradicted flatly," as her own daughter afterwards tells us (R., 143), by *Mrs. Mary I. Campbell herself*, as well as by about all of the witnesses for the defendants, and by one of the complainants' own witnesses, Mrs. Bradley (R., 38, 39).

Realizing all this, what do they do next?

Complainants' Testimony in Rebuttal.

On November 25th, *twelve* days after I had announced our case closed with the cross-examination of Miss Moore, they recalled—

Mrs. Mary K. Campbell (*R.*, 137).

Direct examination (R., 137):

Q. "Mrs. Campbell, one of the witnesses examined by the defendants, who was for a long time a nurse of the elder Mrs. Campbell, testified that upon one occasion

she saw you in Mrs. Campbell's room, and that Mrs. Campbell called for her money-box and gave you *two or three dollars.* State whether *such an occurrence* ever transpired." A. "Never; if she *sent me money* it was by check, through Mr. Moore."

Q. "That did not transpire?" A. "No, sir."

And no one has said that it did. By turning to the testimony of the witness referred to, Mrs. Carrie Carlisle (R., 82, 83), before mentioned by me,—and who was a maid, not a nurse,—it will be seen that the witness did not say that Mrs. Campbell gave Mrs. Mary K. Campbell "*two or three dollars.*" She did not know *how much* she gave her.

Q. "You remember Mrs. Baker's examination? *She testified that a short time after the death of Miss Eloise Campbell that she was sent for by Mrs. Mary I. Campbell,* and she went to see her, and she testified what took place at that visit. Do you *know* of anybody else besides Mrs. Baker *who was present at that time?*" A. "Yes."

By referring to the testimony of Mrs. Baker it will be seen that she did not say that at the visit at which this conversation is alleged to have taken place "that she was sent for by Mrs. Mary I. Campbell." She says, "*Sometimes* she used to write to me to come to see her" (R., 40); and, furthermore, she did not *then* say that this alleged visit was "a short time after the death of Miss Eloise" (1885), as complainants' counsel puts it, but that it was "some months, *not as much as a year,* before the death of Mrs. Mary I. Campbell" (1893) (R., 40).

Now, note particularly again the next question and answer (R., 133):

Q. "When did you *first find* that out?" A. "Well, I *first* found it out *when this subject was agitated, this suit being brought,* but I do not know what time it was."

This is "flatly contradicted" by *their* next witness, Miss Baker, as will be seen from her testimony (R., 145), which I shall refer to presently.

This does not suit counsel for the complainants, so he puts the question to her again:

> Q. "My question is, when did you first find out that this third person knew of this conversation about which Mrs. Baker testified?" A. "After Mrs. Baker *testified*, I found out positively that a third person was present."

Mrs. Baker finished her testimony, in which she said: "I WAS ALONE" when this alleged conversation took place, on October 24 (R., 38). *One week afterwards*, October 31, she comes back and changes it only as to the *times* when it took place (R., 45), but does not even then pretend that any one was with her, but says, "*I* went to see her," *and she does not make any change in the part of her deposition in which she declares unequivocally, and in answer to the question of complainants' counsel, "I was alone!"*

The complainants held another session "after Mrs. Baker testified," viz., on October 28 (R., 52), and they did not close their testimony-in-chief till after both of their witnesses, Mrs. Baker and Mrs. Mary K. Campbell, had been called again, three days afterwards, October 31 (R., 57), and the examiner had read this testimony all over to them (R., 149, 150).

Then the witness tries to make it appear that Mr. Campbell by doing certain things in his lifetime, *in* "1868" (R., 138), had made the shares of the daughters and son equal. I submit, in the first place, that such testimony as she gives proves nothing of the kind, *even as of that date*, and it certainly does not prove that he did nothing on the son's account after 1868 and before his death, in 1881; but even if that was all true, *until they prove that Mrs. Campbell made her will "in conformity to an agreement" with Mr. Campbell*, as they allege in the seventh paragraph of their bill (R., 3), I

take it that Mrs. Campbell had the right to do whatever she pleased with any or all of the property left her by her husband, just as this witness says she could, and for this reason also she said she did not think Mr. Campbell's will "a just will" (R., 48).

She is next asked as to the influence alleged to have been exercised over Mrs. Campbell by her daughters in reference to a Miss Mason after her return from Philadelphia, and in substance she states that "she had *repeatedly* befriended her at former times," but "never gave her anything after that" (R., 139).

By referring to two of the letters *introduced in evidence by the complainants* it will be seen that Mrs. Mary I. Campbell had her suspicions about this Miss Mason some time before her return to the Moores' (R., 61), and this witness, by the above *admission, contradicts what she herself testified to when first called*, in answer to a question by me, relative to Mrs. Mary I. Campbell's charitable disposition (R., 48), viz:

> *"I never heard of her being very charitable before her husband's death, nor after her husband's death, except to me."*

So now they have shown by this witness that she, one of the complainants and the mother of all the rest of them, *knew* "when this subject was *agitated*—this suit *being* brought"—that some one accompanied Mrs. Baker to Mrs. Mary I. Campbell's and was present when this alleged remarkable conversation took place.

I observe, then, 1st, they should have introduced the testimony of this other alleged witness before closing their case-in-chief; 2d, it "contradicts flatly" the testimony of their other witness, Mrs. Baker, who has sworn "I WAS ALONE" (R., 41).

Well, who is this alleged witness that they say *now* "was present at *that* time"?

Miss Eliza Burgess Baker (*R.*, 140).

The daughter of Mrs. Laura Ellen Baker, who has deliberately and repeatedly declared "I WAS ALONE!"

So they propose to contradict, through this girl, her mother, their other witness, as well as Mrs. Mary I. Campbell herself. To say that such a step requires *very much nerve*, is, I think, putting it quite mildly!

What, briefly, does she swear to?

She is 27 years old (*i. e.*, she was *16* years old when Mrs. Mary I. Campbell and Mrs. Moore are alleged to have said all those mean, cruel things against each other and *in her presence as secrets*), and resides with her mother at 1932 Fifteenth street N. W. (R., 140).

Direct examination:

> Q. "Please state the circumstances under which you went the first time to see Mrs. Campbell with your mother." A. "After the death of Miss Eloise Campbell my mother got a letter from Mrs. Mary I. Campbell. She asked my mother to come and see her and she told her when she got there that *she had divided* the money that Mr. Campbell had left for the support of his *children*—(Mrs. Baker said '*his sister Eloise*' [R., 41, 42])—between Mrs. Russell and Mrs. Moore, as they had made her promise to do, and they worried her so she did it to prevent being worried * * * As near as I can remember, it (this alleged conversation) was within *two or three weeks* of Miss Eloise's death; it was very shortly afterwards."

The mother of this witness said, *in her* CORRECTED *testimony*—after first telling us that it occurred "not as much as a year before her (Mrs. Mary I. Campbell's) death" (1893) (R., 40)—that this part of the alleged conversation took place

"a month or six weeks, I think," after the death of Miss Eloise (1885) (R., 45).

As we conclusively proved that Mrs. Mary I. Campbell was not at the Moores' from about October 10 to December 15, and that the house was closed up, this witness endeavors to help her mother out of that dilemma. But observe, particularly, that *this is the very part* of this alleged conversation in which Mrs. Baker swears "I WAS ALONE!" (R., 41).

> Q. "State whether you were at Mrs. Moore's to see Mrs. Campbell with your mother after that." A. "Yes, sir; when my mother went into the room she told her to come close to her and to listen to what she had to say and not to answer, *for there was always some one listening at the door.* She told her she was going to Philadelphia to live with her other daughter; that Mr. Moore and Mrs. Moore treated her unkindly; that neither wanted her there, and that she was afraid of Mr. Moore, and she hoped she would be happier in Philadelphia than she had been here. I should have stated also that she wrote to my mother to come before she went, and told her in the letter she had something to tell her, *and while the old lady was telling her the tears were rolling down her face*" (Mrs. Baker must have forgotten to mention that "the tears were *rolling* down her face") "and then, when we went downstairs, Mrs. Moore asked my mother if her mother had been talking against the Moores; that if she had, not to mind her, for she was in her dotage, and that she went around the neighborhood talking about them."

So the only part of the whole alleged story told by Mrs. Baker, in three separate visits by her to Mrs. Campbell, that this witness was *not* present at, was the *first* interview before the death of Miss Eloise. Thus the daughter is made to contradict her own mother as "flatly" as, she tells us afterwards (R., 143), her mother is contradicted also by Mrs. Mary I. Campbell herself, *and the mother is not recalled* to explain or reconcile, if she can, these diametrically opposed

versions of these alleged interviews and tell us whether or not she *still* adheres to her own *amended* deposition.

Let's see if this witness is contradicted any more, for we have just shown that she is contradicted by her own mother as well as by Mrs. Mary I. Campbell.

> (R., 141:) Q. "Did you see Mrs. Campbell after she returned from Philadelphia?" A. "Yes, sir; once. She was *very childish* then."

How does this agree with the testimony of numerous witnesses who saw and talked with this old lady frequently after her return from Philadelphia, before mentioned by me? *How does it agree with the testimony of their own witness, Mrs. Bradley* (R., 38, 39)?

Then I asked her a few questions (R., 141):

> Q. "Miss Baker, your mother knew *all* that you have testified to just now, *all the time*, didn't she?" A. "Yes, sir; I believe so. She *certainly* knew it at the time."
>
> Q. "How did you happen to be called to testify just now—at this time?" A. "Because I did not mention to *any one* that I knew about it *until I heard that my mother made mistakes in her evidence.* I have never been in a case of this kind before. I had never been in a law case, and I did not want to be drawn into it *unless it was absolutely necessary to corroborate my mother's statement.*"

Observe that she says *she* did not mention it to *any one* until *after* her mother had testified. How, then, may I ask, did Mrs. Mary K. Campbell know about it *before* this suit was brought—"being brought, * * * when this subject (of a suit) was agitated"—as she says she did (R., 138)? And who told this witness "my (her) mother *made mistakes in her evidence*"? And she only testifies *because* "*it was absolutely necessary to corroborate my mother's statement!*"

> (R., 142:) Q. "Have not you and your mother talked these matters over repeatedly to each other?" A. "Of course, *naturally* she spoke of it."

Q. "She knew all you have testified to?" A. "At that time; yes, sir."

Q. "Now, as I understand you, you were in the room when Mrs. Campbell said all this to your mother?" A. "About *having divided* the money?"

Q. "Yes." A. "Yes, sir; I was."

This is the very one of the alleged interviews in which her mother swears "*I was alone*" (R., 41).

(R., 143:) Q. "What kind of a lady was Mrs. Campbell as to *truthfulness*, do you think?" A. "Well, I should say that *she was a person who had very strong regard for the truth*, as far as I ever knew anything about her, and I knew her, up to the time of her death, all my life."

Q. "*Anything she said you would rely upon it implicitly?*" A. "*Yes, sir.*"

Q. "*That is, she was a woman of strict integrity and truthfulness?*" A. "*Yes, sir; I should say so.*"

Then, against such testimony as this witness and her mother furnish us, I put the testimony of this old mother, who *at this very time, October* 6, 1885, states:

"I have today, *voluntarily, without suggestion from any one, given* to my two daughters the 4½ and 4 per cent. U. S. bonds," etc. (R., 134).

Then I ask her where she has been and how she came to testify, and she answers (R., 143):

"I have been *home. I testified simply to corroborate my mother's testimony. I thought I ought* to come here to testify to *corroborate* my mother's testimony, *as that letter had been shown* (from Mrs. Mary I. Campbell relative to the gifts of these bonds above referred to [R., 134]) to have been written by Mrs. Campbell, WHICH CONTRADICTED FLATLY MY MOTHER'S TESTIMONY, and I felt, in justice to my mother, I ought to testify to what I had heard."

Q. "*Who made that suggestion to you—that you ought to testify to corroborate your mother?*" A. "I think it was you, Cousin Mary—*Mrs. Mary K. Campbell.*"

"*Ought* to testify to *corroborate* her mother," who, she has just told us, "*she heard had made mistakes* in her evidence," and who, she says, has been "*contradicted flatly*" by Mrs. Mary I. Campbell herself, who, she also says, "was a woman of *strict integrity and truthfulness—anything she said you could rely upon it implicitly*"—*because* "*it was absolutely necessary to corroborate my mother's statement!*"

Is this not a most apt illustration of—

> "Whatever one woman says another woman is determined to clinch."

Redirect (R., 144):

> Q. "Miss Baker, Mr. Cragin asked you if you had not frequently spoken with your mother about this testimony. You answered yes. Now, when did you speak with her about this testimony?" A. "Well, she asked" (without permitting the witness to finish her answer she is interrupted with the question)—
>
> Q. "Was it before or after your mother testified here?" A. "*She would tell me what occurred down here, you know*" (she is again interrupted with the question)—
>
> Q. "Was it before or after?" She answers finally: A. "It was after, *because she would tell me what had occurred down here*, and that is how I came to tell what I knew about it."

But Mrs. Mary K. Campbell testifies that *she knew about it* "when this suit was *being brought*" (R., 138). Who told her? And if, as this witness says, *her mother* "*would tell me what had occurred down here*"—*i. e., while her mother and Mrs. Mary K. Campbell were giving their testimony*—then she and her mother had talked it all over *before* her mother, *a week afterwards*, appeared *and had the examiner read her testimony all over to her, and made all of the corrections that she desired, and still insisted upon it*—"*I was alone.*"

Then she says (R., 144) that she and her mother *did* discuss with each other about the alleged *first* interview at

which she was *not* present, but that they did *not* talk about the other two interviews at which, she says, she *was* present. Is this at all reasonable or probable?

> (R., 145:) Q. "*Did Mrs. Mary K. Campbell or any of the plaintiffs in this suit*, who are her daughters, know of your having been present at these interviews or know what you remember with respect to them until after your mother had testified?" A. "*They did not know that I had been present;* no, sir; but *I told her, Mrs. Mary K. Campbell*—let me see—*some months before this examination first began*, I told her I knew something about the case, but unless it was *absolutely necessary* I did not want to be drawn into it. *I did not tell her I was present* or what I knew. I simply told her I knew something about it. I did not tell her anything about it. *I did not tell her that I was present*, but I told her I knew something about it."

How does this agree with the statement of their other witness, Mrs. Mary K. Campbell, who has just testified *in answer to questions of complainants' counsel* (R., 138):

Q. "Do you *know* of anybody else, besides Mrs. Baker, *who was present* at that time?" A. "Yes."

Q. "When did you first find that out?" A. "Well, I first found it out when this subject was *agitated*, this suit *being brought*."

I leave them to reconcile such testimony.

Mr. Thomas Brooke (*R.*, 146).

The last of the complainants' witnesses is Mr. Thomas Brooke. *He resides with Mrs. Baker and her daughter* at 1932 15th street N. W., and is a distant connection of hers by marriage (R., 146). He, like Miss Baker, is brought forward to *corroborate* (so called) Mrs. Baker. I respectfully submit that even *if* Mrs. Baker did then say all that he swears to his testimony is clearly incompetent. He simply says that Mrs. Baker told him certain things *that she said*

Mrs. Mary I. Campbell told her. Under the facts, as developed by the conflicting testimony of all three of the complainants' witnesses, Mrs. Mary K. Campbell, Mrs. Baker, and Miss Baker, particularly the latter two, the rule of evidence permissible under certain circumstances for the purpose of corroborating a witness does not here apply. A witness impeached by her own contradictory sworn statements cannot be corroborated by her own declarations not under oath, and you cannot make a falsehood the truth by repeating the falsehood any number of times to any number of persons.

But he does not testify even to the same alleged interviews that Mrs. Baker does.

Briefly he says, in answer to questions by complainants' counsel (R., 146, 147):

> "She (Mrs. Baker) was in the habit of mentioning—talking about her trip and her visit—that she had been to Mrs. Campbell's, and in that conversation (the first) she spoke of Mrs. Campbell, saying she was very much worried—harassed—by her two daughters, Mrs. Russell and Mrs. Moore, about that money. I cannot say that harassed is the exact word she used, but that is the meaning of it—harassed by her daughters continually to divide that money if she outlived Miss Eloise Campbell."
>
> Q. "Now, do you know of Mrs. Baker paying any other visit to Mrs. Campbell?" A. "Yes, sir; she got another letter from Georgetown, asking her to come in, and she did, and her daughter went with her."
>
> Q. "State what took place after Mrs. Baker and her daughter returned from that visit (the second)." A. "She said that she had given that $12,000 that was left; that they had worried her so she had divided the money between the two daughters."
>
> (R., 148.) Q. "Do you know of any other occasion in which she went to see Mrs. Campbell?" A. "Yes, sir. The *third* time. A third letter was written to her. Her daughter went with her on that occasion, and she gave her some furniture she was speaking of."

Q. "Was there anything said about *that visit* by Mrs. Baker?" A. "*Yes*, as it was her habit of talking with the family after her trips, and particularly her visit to Mrs. Campbell; always visited Mrs. Campbell. At that time, in the first visit, my aunt was alive—her sister-in-law. Of course, she naturally inquired. She spoke *then* (*'the third time'*) *that she had given it; that Mrs. Campbell told her that she had divided that money between Mrs. Moore and Mrs. Russell.*"

This is the alleged "*third*" visit, remember, that he is asked about, and he says:

"*She spoke then that she had given it;* that Mrs. Campbell told her that she had divided that money between Mrs. Moore and Mrs. Russell." *Nothing more.*

Does this corroborate Mrs. Baker in what she testifies to having occurred on this alleged third visit? Not at all. She says, in her final *corrected* statement, as to what took place *on the third visit:*

"Then just before she went to Philadelphia she told *me of the unkind treatment of Mrs. Moore and Mr. Moore*" (R., 45).

It will be observed, too, that according to this witness Miss Baker, who is *now* alleged to have accompanied her mother on the last two of these interesting visits to Mrs. Campbell, has never said a word about the startling disclosures made in her hearing and presence *as secrets* by Mrs. Campbell. She does not seem to have joined in at all in these pleasant family conversations upon their return home, but she recollects, however, more about them *now* than *even* her mother does, for she remembers—

That SHE WAS WITH HER MOTHER, whereas her mother insists upon it, "*I was alone.*"

And she saw the "tears ROLLING *down her* (*Mrs. Campbell's*) *face*" while this old lady was narrating for their benefit her

alleged "tales of woe," and Mrs. Baker, it appears, has also entirely forgotten this minor occurrence!

So much for this so-called *corroborating* testimony.

After numerous meetings, set by counsel for complainants, and adjournments at his request, without taking any more testimony (R., 148, 149), he finally closes his case on December 12, after introducing two more immaterial letters in evidence (R., 70, 71).

I did not deem it necessary to introduce any further testimony in rebuttal.

Having now placed before the court the material *facts* in this case as brought out by the testimony, the application of the law is, I think, very plain.

I.

AS TO THE WILL OF WM. H. CAMPBELL.

The complainants having themselves, through one of themselves, disproved the fifth allegation of their bill (R., 2) viz., that—

> "Mr. and Mrs. Wm. H. Campbell *always declared* that their property should be *equally* divided between their three children, Leonidas, Virginia, and Julia,"

to wit (R., 50):

> "Mr. William H. Campbell told me (Mrs. Mary K. Campbell) that he intended leaving '*more*' to his son than to his daughters"—

precisely what Mrs. Mary I. Campbell tells us he did do (R., 59, 132, 133), and having failed to offer a word of testimony to sustain the sixth and seventh paragraphs of their bill, which are really the corner-stone of their case (R., 2, 3), viz., that—

> "*for the purpose of carrying out this intention* the said *Wm. H. Campbell*, on the 16th day of March, 1878, made and published his last will and testament,"

and that—

> "*Mary I. Campbell* made and published her last will and testament, *in conformity to the aforesaid understanding and agreement and for the purpose of carrying out the terms and provisions of the will of Wm. H. Campbell*,"

we certainly have nothing to do here with the will of Wm. H. Campbell. He left everything, with the exception of a few legacies, absolutely to his wife, and says nothing whatever about any such pretended agreement (R., 9, 10, 11), and she had a perfect right, then, to do whatever she pleased with the property so left her without consulting any of the parties to this suit, as admitted by the complainant Mrs. Mary K. Campbell (R., 48).

II.

GIFTS, ADVANCEMENTS, AND ADEMPTION OF LEGACIES.

> "The two elements necessary to constitute a perfect gift are the *intention* to give and the *delivery* of the thing given."
>
> Pickslay *vs.* Starr, 149 N. Y., 432.

The gift of these bonds by Mrs. Campbell to her daughters, October 6, 1885, cannot (any more than can the gifts of $1,000 and $100 to them in 1883—the only other sums of any kind received from her except the usual Christmas gifts of $100 to all) (R., 103, 108, 136) be considered an advancement to them, as claimed by the complainants in the fourteenth paragraph of their bill (R., 4, 5)—

> "and *pro tanto* an ademption of the legacies bequeathed to them respectively, and must be accounted for as such in the final settlement of the estate,"

because she herself says that she did not so intend it, but, on the contrary, she declares she did it for the express purpose of

"*equaling* their share with the amount received by their brother *and his family*" (R., 134).

But if she had said nothing as to what her *intentions* were, even then it could not be regarded or treated as an *advancement*, because that doctrine has reference only to cases of "*total intestacy.*"

> "An advancement is a giving by anticipation the whole or a part of what it is supposed a child will be entitled to receive on the death of the parent making it and dying *intestate.*"
>
> Clark *vs.* Wilson, 27 Md., 693.
> Stewart *vs.* Pattison, 8 Gill, 46, 56.
> Hayden *vs.* Burch, 9 Gill, 79, 83, 84.
> Johnson *vs.* Belden, 20 Conn., 324.
> Thompson *vs.* Carmichael, 3 Sand. Ch., 120.
> A. and E. Ency. of Law, vol. 1 (new ed.), 760, 761, 763.

III.

UNDUE INFLUENCE.

So we come next to the question of undue influence—that is, that the two daughters, aided and abetted by their husbands, perpetrated a fraud upon their mother, and by such means illegally obtained from her $15,000 worth of United States registered bonds.

The transfer of *registered* United States bonds is, I submit, as is well known, about as formal a matter as the transfer of real estate. (See certificate of acting Register of Treasury (R., 36) as to how this transfer was made.) The burden of proof is clearly upon these complainants to sustain this charge (Hammond *vs.* Hopkins, 143 U. S., 224, 273, *ante*), particularly where, as in this case, the gift is *from the parent to the child*, the *presumption* then being "that it was caused

by the ordinary promptings of affection," and was an "intended benefit"

Jenkins *vs.* Pye, 12 Peters, 241;
A. & E. Encyc. of Law, vol. 27, p. 489;
Saufley *vs.* Jackson, 16 Tex., 579;
Yeakel, ex't'r, *vs.* McAtee, 156 Pa., 600;
Sayre *vs.* Hughes, 5 Eq. Cases, L. R.. 376;
Teegarden *vs.* Lewis, 145 Ind., 98, and numerous other authorities.

But I respectfully submit that the evidence *proves* as clearly, almost, as any problem in mathematics can be *demonstrated* that Mrs. Mary I. Campbell, who was admittedly "a woman of strict integrity and truthfulness," according even to the testimony of the *complainants* (R., 143), never told Laura Ellen Baker and her sixteen-year-old daughter, Eliza Burgess Baker, any such silly falsehoods as they swear to, and Mrs. Campbell herself declares that she never did (R., 134); nor is it probable or reasonable that Mr. Moore and Mr. Russell "aided and abetted" their wives in any such mean, underhanded scheme as testified to by these two witnesses, and at the same time declined to accept about $3,500 legally due them by this same Mrs. Mary I. Campbell as commissions on the settlement of Mr. Campbell's estate, charging instead only $1,000 (R., 35).

But, to show the utter absurdity of this whole charge, let me apply a little mathematics to the matter at issue.

The claim of the complainants, in brief, is that in the year 1885 the daughters received the equivalent of $15,000—*i. e.*, that the two daughters each received $7,500, whereas they (the daughters) should have received $5,000 each, and the daughter-in-law, representing the deceased son, should also have received $5,000. In other words, that Mrs. Moore and Mrs. Russell *then* received $2,500 *apiece more than they should have received.*

Now, as the daughter-in-law acknowledges that Mrs.

Campbell gave her $1,000 in the summer of 1891 (R., 54, 58, 59), this will leave the excess, *according to their theory* ($2,500 — $1,000), $1,500 *in favor of the two daughters out of an estate "worth about* $89,000" (R., 120), and that while resorting to such alleged contemptible means to obtain this money the sons-in-law voluntarily threw away about $2,500 that was legally due them as commissions. Is this reasonable?

But let me go a step further:

According to the testimony offered by the complainants themselves we have this *admitted* state of facts *known and "believed" by them* (R., 55, 56, 59) *when they filed this bill:*

The son and his family had received, in excess of the daughters, prior to the gift of these bonds (R., 55, 56, 59).....	$6,897 62
And subsequent thereto (in the summer of 1891) (R., 48, 58, 59).....	1,000 00
Making a total of.....	$7,897 62
The daughters, *in the meanwhile*, had each received the equivalent in bonds (R., 4) of.....	7,500 00
Leaving an excess in favor of the son's family of	$397 62

Now, let us look at the other side of this case:

The evidence shows, as before stated, that shortly after the death of Mr. Campbell this same daughter-in-law, who is one of the chief figures in the present suit, accused one of these same daughters of this old lady of practicing a fraud on the father, which provoked even the anger of Mrs. Mary I. Campbell, and she writes to the daughter-in-law, as well as to the accused daughter, denying the charge, *declaring it "false in every particular,"* and also adding:

> "We did it in justice to them, and even this amount did not make them equal to him, as the books now show $6,897.62 *more* than either of them (the daughters) received" (R., 59, 132).

And this daughter-in-law states (R., 56) that "*she believed* what Mrs. Campbell had written in that letter."

Now, to apply, in the same way, a little mathematics:

The two daughters, shortly after this mother had written this letter, each received from her the equivalent of $7,500, making a difference ($7,500 — $6,897.62) of $602.38 only in their favor between what they received and what the son "and his family" had received up to about the time when Mrs. Campbell sent those two similar letters or statements to her falsely accused daughter and this daughter-in-law. What she gave her daughter-in-law, between the time of sending these duplicate statements and the gift of the bonds to her daughters, we do not know; *but she declares*, in the paper accompanying the gift of the bonds, "thus *equaling* their share *with the amount received by their brother and his family*" (R., 134).

She knew what she and her husband had given her daughters *and her son's family*, and here we have the unqualified statement from her that by the gift of these bonds she had, *in October, 1885, equalized* the shares of her three children, *just as this daughter-in-law* FIRST *testified that Mrs. Baker had told her she had been informed by Mrs. Mary I. Campbell* (R., 47).

Now, as mentioned above, this representative of the son's family received from Mrs. Campbell, in the summer of 1891, $1,000 additional, *the daughters receiving nothing in the meanwhile*, the $1,000 that their mother gave each of them being two years prior (August, 1883) (R., 136) to the date of this statement of Mrs. Campbell (October, 1885) (R.,134). *So, as a matter of fact, the son's family have received $1,000 more than either of the two daughters.*

The admitted facts that both Mr. Moore and Mr. Russell, the sons-in-law of this old lady, rendered her gratuitously every service in their power in the proper care and management of the estate (R., 108, 109, 119), and that they at her request made disbursements for her, as she says in her letter to Mr.

Moore of March 8, 1887 (R., 135, 136), "I would have left part of the amount in your hands, as I wish you to dispose of a portion for me occasionally," furnishes no ground for any such imputation as the complainants by innuendo seek to make against them in their bill any more than does the fact that Mr. Campbell had in his lifetime seen fit to loan his son-in-law, Mr. Moore, $5,000 on his notes (R., 9, 34), which indebtedness was duly returned and accounted for by him as one of the executors of Mr. Campbell's estate (R., 35), furnish any foundation for suspicion or fraud, as hinted at by counsel in the argument below.

An examination of the following cases will show that from such relation of the parties and from other relations much more open to just criticism no such construction as claimed by the complainants is placed upon the acts of those who occupy somewhat similar relations with the donor as existed here.

The case of Hunter *vs.* Atkins, 3 Mylne and Keen, 113, decided in 1832, is an old *leading* English authority on this subject:

> "Gift by deed, subject to a power of appointment by the donor, from a person *upwards of 90 years of age to a confidential agent*, who had for many years been in habits of friendship with the donor, *without the intervention of a disinterested third person*—the solicitor who drew the deed being the solicitor of the person who took the benefit under it—declared void by the master of the rolls, but supported under all the circumstances upon appeal."

Sayre *vs.* Hughes, 5 Eq. Cases, L. R., 376 (*ante*). Here we have the gift made *after* the execution of the will, about which so much was said by counsel in their argument below:

> "A widowed mother, *after making her will* in favor of her two daughters, transferred East India stock which had stood in her own name into the names of herself

and the unmarried daughter, and died. Held: that *there was a presumption of intended benefit* to the unmarried daughter, which was unrebutted, and that the stock belonged absolutely to her."

Teakel, ex'tr'x, *vs.* McAtee, 156 Pa., 600 (*ante*):

"A mother (87 *years old and blind*) gave certain bonds and stocks to her daughter. *The evidence affirmatively shows the voluntary character of the gift. It also appears that the mother was not impoverished by the gifts, and that she made no complaint* during the life of the daughter that she had not retained property enough to afford her a comfortable maintenance. *From the evidence it appears that the mother had a strong will and was not controlled by her daughter or anybody else. Held: that the mother was not entitled* after the death of the daughter to have the gifts rescinded."

In this case, too, the gifts were made *after* the execution of the will. The will was made in January, 1885, and the gift, as here, of *United States registered bonds* was made in April of the same year, and the gift of certain railroad stock was made more than a year after the gift of the bonds, and *the mother*, after the death of the daughter, seeks to have the gifts set aside, and the court holds that it cannot be done.

In Leddel's Ex't'r *vs.* Starr, 20 N. J. Eq., 274, the court say (page 287)—*just as occurred in this case:*

"*But the true consideration was, as clearly appears from the evidence, a strong desire on the part of Mrs. Leddel to make up to Mrs. Starr a great inequality in the provisions of the will of her husband, by which the share of Mrs. Starr was less than that of her other children by at least that amount.*"

Other equally strong cases will be found in—

Jenkins *vs.* Pye, 12 Peters, 241 (*ante*).
Conley *vs.* Nailor, 118 U. S., 127 (*ante*).
Mackall *vs.* Mackall, 135 U. S., 167 (*ante*).
Murray *vs.* Hilton, 8 D. C. App., 281.
Hepworth *vs.* Hepworth, 11 Eq. Cases, L. R., 10.
Saufley *vs.* Jackson, 16 Tex., 579 (*ante*).
Millican *vs.* Millican, 24 Tex., 426.
Eakle *vs.* Reynolds, 54 Md., 305.
Muir *vs.* Miller, 72 Iowa, 585.
Teegarden *vs.* Lewis, 145 Ind., 98 (*ante*).
Orr *vs.* Pennington, 93 Va., 268.

Now let me compare the present case with that of Taylor *vs.* Taylor *et al.*, *ante* (8 How., 183).

As previously mentioned by me, counsel for complainants lay great stress on the fact that Mrs. Moore thought best, when her mother expressed the wish to give her and her sister these bonds, to suggest to her (R., 123), "Don't you think it would be well to have something in writing regarding this matter, as we have had this previous trouble with Mary (the same sister-in-law, Mrs. Mary K. Campbell) about the legacy of $5,000?" And the argument is advanced that if this gift had been really made in the spirit and with the intention claimed for it, then nothing *in writing* would have been asked by the daughter of the mother. As a general proposition this is undoubtedly true, but the facts in no two cases are exactly alike, and, as was said by this court in the case of Conley *vs.* Nailor, 118 U. S., 127, 133, "cases like the present must each stand upon its own facts," and I respectfully submit that here these daughters, *knowing from previous experience* with whom they might hereafter have to deal, took the wise course and had their mother do again what she herself had found it *necessary* to do only two or three years before to convince this same daughter-in-law that Mrs. Russell had not only had nothing to do with Mr. Campbell

leaving her and her sister, by his will, $5,000 each, but as a matter of fact it was done even "without the knowledge of either of them" (R., 59).

What the result was, when the daughter-in-law received that emphatic letter from her mother-in-law, is evidenced by her own letter to Mrs. Russell of June 17, 1882 (R., 133), which she at first denied having written (R., 49), in which she says:

"*As soon as I felt that you had been falsely accused I began to make reparation by showing your mother's statement*," &c.

How natural, then, with the recollection of all those recent unpleasant events in her mind, and remembering what had then been found necessary to remove the former "false charge," was it for the daughter to make the suggestion she did to her mother, and how equally natural was it for the mother to respond (R., 123), "Oh, yes; certainly, by all means."

How entirely different are the facts and surrounding circumstances in the Taylor case, which are briefly these:

A young woman, who "had little more than attained her majority" when the transaction complained of took place, seeks herself to have set aside a deed made by her in trust for the benefit of her parents, "who once had lived in affluence and luxury," but had, "by commercial reverses, been brought to indigence," which deed had been executed by her to one executor for the benefit of the wife of another executor "on no real consideration," and the recitals thereof the evidence shows to be "palpably false," and made, too, "under extreme urgency and harsh treatment," but for the object "of reconciling her parents to her marriage they had theretofore opposed," and by which conveyance she had despoiled herself of "every description of property derived from her uncle" (and which was all, it seems, that she possessed). The mother, Julia Scorborough, who, the complain-

ant charges, had "importuned and urged" her to make the deed and who took benefit thereunder, and through whose "urgent importunity" she had written the letter addressed to her father, set out in the bill, as well as Joseph Scorborough, a brother, who had, unknown to the complainant, signed her name to a consent order appointing a new trustee under this deed in trust for the mother (rendered necessary by the death of the former trustee, William Taylor), *never answered the bill*, and "against which two parties an order was obtained taking the bill *pro confesso*." So *the mother* (the father in the meantime having died) *and the brother, the very persons who knew better than any one else whether or not these allegations made by the complainant, charging them with fraud and duress, were true, by their silence confess to the truth of the charges made against them by this daughter and sister!*

Accompanying such a transaction as this, and under these peculiar conditions, there was filed with the answer of Robert M. Goodwin, the substituted trustee under the deed in trust, the letter in question, written by this girl to her father, purporting to give the reasons actuating her in making the deed in question, in which "she accuses herself, or fancies herself accused, of unworthy motives or conduct, because she had been the object of her uncle's affection."

This court, very properly, under all of these circumstances, ask: "Can we accredit the probability of a formal diplomatic communication from a daughter, just grown, to her father, residing under the same roof, to justify an act which they both believed it a sacred duty to perform?" It was ordered that the deed be set aside and the property reconveyed to the grantor.

The facts and surrounding circumstances in the two cases are not at all similar: There was no reason *for any such letter* from Miss Scorborough to her father; *there was every reason, in view of past experience, for some statement from Mrs. Campbell* as to the facts attending the giving of these bonds

to her daughters, and which bonds, the proof shows, formed quite a small part of her large estate.

The mother and the brother of Mrs. Taylor, in effect, *confess that the charges of fraud, &c., made against them were true.* Mr. and Mrs. Moore and Mr. and Mrs. Russell all, most positively, deny, both in their answers and their testimony, that they ever made any suggestion, even, to Mrs. Campbell about the giving of these bonds.

IV.

LACHES.

Having now considered the case on its merits, I desire, in conclusion, to call the attention of the court to another subject, before referred to by me, growing out of the facts as *alleged in the bill and developed by the testimony of the complainants.*

This suit was filed *April* 16, 1896, to set aside a gift, *inter vivos, alleged in the bill* to have been made by a mother to her only two children *on "the 6th day of October*, 1885," nearly *eleven years after the transaction admittedly took place*, and about *three years after the death of the donor. What reasons do the complainants give in their bill or their testimony for this delay? None whatever!*

Much stress was laid by counsel in their arguments below as to why Mrs. Campbell should have done this *after* making her will. May I ask in return, *Why did not the complainants in her lifetime ask her why she did it? Why did they wait till after her death before making the inquiry* if they *really* wanted to know the truth?

As is said by this court in Hammond *vs.* Hopkins (*ante*), "the counter-presumption now arises that there has been delay *with a view* to have the undue advantage of evidence

on one side no longer capable of explanation on the other," and see *ante*.

Leddel's Ex't'r *vs.* Starr, 20 N. J. Eq., 274, 287.
Sayre *vs.* Hughes, 5 Eq. Cases, L. R., 376.
Teakel, ex'tr'x, *vs.* McAtee, 156 Pa., 600.

In the recent case of Orr *vs.* Pennington, 93 Va., 268 (*ante*), we find somewhat the same question as to laches as that involved in the present case, being a bill to set aside a deed (and the present transfer, as before stated, has about all of the solemnities of such an instrument) on the ground of undue influence. The court say (page 270):

> "The conveyance was made in April, 1883, and the grantor died in May following; the grantor took possession of the property under the deed, held and occupied it until his death, in August, 1888. In May, 1892, this suit was instituted—*nine years* after the conveyance was made and the right of the appellant accrued. *No reason is assigned in the bill why the suit was not instituted earlier. In the proof* and in the argument *the claim is made* that, whilst the appellant believed before his father's death that the grantee had unduly influenced him to make the deed, he was unable, until recently before the suit was brought, to get the necessary evidence to show this," &c.

The court below dismissed the bill, and the supreme court of appeals unanimously affirmed that decree.

In the present case "no reason is assigned in the *bill*," none "in the *proof*," and none even "in the argument" below.

In the case of Lansdale *vs.* Smith, 106 U. S., 391 (*ante*), which was an appeal from a decree of the supreme court of this District and which this court unanimously affirmed, *and the appellant was represented therein by the same counsel who filed the pressnt bill in equity*, the court say (page 394), quoting from its former opinion in Badger *vs.* Badger, 2 Wall., 87, 95 (*ante*):

"A party who makes an appeal to the conscience of the chancellor *should set forth in his bill, specifically, what were the impediments to an earlier prosecution of his claim, how he came to be so long ignorant of his rights, and the means used by the respondent to fraudulently keep him in ignorance, and how and when he first came to a knowledge of the matters alleged in his bill; otherwise the chancellor may justly refuse to consider his case on his own showing without inquiry whether there is a demurrer or formal plea of the statute of limitations contained in the answer. These principles are decisive of the case before us.*"

Yet, in the face of this opinion, *the same counsel* prepares and files the present bill in equity, and not only ignores what this court then informed him, and again reiterated in Richards *vs.* Mackall, 124 U. S., 183, 187; Hammond *vs.* Hopkins, 143 U. S., 224, 252 (*ante*), and Felix *vs.* Patrick, 145 U. S., 317, 331, 332, was *necessary to be set out in his bill*, but *the evidence of his own witnesses proves, before he closes his testimony-in-chief*, that the chief actor herein, the daughter-in-law, representing the deceased son, knew all about this gift "a very short time" after it was made, in October, 1885 (R., 57), and the *nominal* parties in interest, her children, are not produced at all to tell when they were first informed of the transaction!

This well-recognized principle of equity is firmly established by almost numberless authorities:

Sullivan *vs.* Railroad Co., 94 U. S., 806.
Brown *vs.* County of Buena Vista, 95 U. S., 157.
Speidel *vs.* Henrie, 120 U. S., 377.
Parker *vs.* Dacres, 130 U. S., 43.
Mackall *vs.* Casilear, 137 U. S., 556.
Galliher *vs.* Cadwell, 145 U. S., 368, 372, 373.
Thorn Wire Hedge Co. *vs.* Washburn and Moen Manf. Co., 159 U. S., 423, 444.
Willard *vs.* Wood, 164 U. S., 502.
Whitney *vs.* Fox, 166 U. S., 637.
Penn Mut. Life Ins. Co. *vs.* Austin, 168 U. S., 685.

I therefore respectfully submit that *both on the facts and law, as well as on the merits and pleadings*, the complainants have *totally failed* to make out any case that entitles them to the relief prayed for in their bill, and, if the court is of opinion that it has jurisdiction, that the decree of the Court of Appeals of the District of Columbia, affirming the decree of the supreme court of said District, should be affirmed.

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